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*Hague Permanent Court of Arbitration*  
THE

# VENEZUELAN ARBITRATION

BEFORE

THE HAGUE TRIBUNAL

1903

PROCEEDINGS OF THE TRIBUNAL UNDER  
THE PROTOCOLS BETWEEN VENEZUELA AND  
GREAT BRITAIN, GERMANY, ITALY, UNITED  
STATES, BELGIUM, FRANCE, MEXICO, THE  
NETHERLANDS, SPAIN, SWEDEN AND NOR-  
WAY, SIGNED AT WASHINGTON, MAY 7, 1903



WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1905





# TABLE OF CONTENTS.

## PART I.

|  | Page. |
|--|-------|
| Final report of the agent of the United States:  |       |
| Letter transmitting report to Congress.....  | 7     |
| Letter submitting the report to the President.....   | 9     |
| Report of the agent.....   | 11    |
| Protocols of arbitration.....  | 23    |
| Protocols of proceedings.....  | 43    |
| Decision of the tribunal.....  | 106   |
| List of documents presented to the tribunal.....   | 114   |
| Letter of counsel for the United States to the Administrative Council...                       | 131   |
| Letter of French agent to the Administrative Council.....                                      | 136   |
| Protest of Japan against Mr. Mourawieff's remarks in closing the sessions of the tribunal..... | 139   |
| Protest of Mr. Herbert W. Bowen.....   | 140   |
| Instruction to Mr. Newell with respect to the third clause of the decision.....                | 142   |

## PART II.

|                        |     |
|------------------------|-----|
| Case of Venezuela..... | 148 |
|------------------------|-----|

## PART III.

|  |     |
|--|-----|
| Appendix to the Case of Venezuela..... | 247 |
|--|-----|

## PART IV.

|                                |     |
|--------------------------------|-----|
| Case of the United States..... | 423 |
|--------------------------------|-----|

## PART V.

|   |     |
|---|-----|
| Correspondence relating to Venezuela (British Blue Book, 1903)..... | 455 |
|---|-----|

## PART VI.

|                                     |     |
|-------------------------------------|-----|
| Cases of—                           |     |
| Great Britain (with appendix).....  | 751 |
| Germany.....                        | 811 |
| Italy.....                          | 848 |
| Belgium.....                        | 866 |
| France.....                         | 875 |
| Mexico (same as United States)..... | 423 |
| Netherlands.....                    | 913 |
| Spain.....                          | 916 |
| Sweden and Norway.....              | 927 |

## PART VII.

| Counter cases of—                       | Page. |
|---|-------|
| Venezuela .....                         | 981   |
| Great Britain .....                     | 987   |
| Germany .....                           | 989   |
| Italy .....                             | 1017  |
| Belgium .....                           | 1049  |
| France .....                            | 1057  |
| Mexico (same as Venezuela) .....        | 981   |
| Netherlands .....                       | 1107  |
| Spain .....                             | 1090  |
| Sweden and Norway .....                 | 1107  |
| United States (same as Venezuela) ..... | 981   |

## PART VIII.

|                              |      |
|------------------------------|------|
| Oral arguments on behalf of— |      |
| United States—               |      |
| Wayne MacVeagh—              |      |
| Opening argument .....       | 1117 |
| William L. Penfield—         |      |
| Opening argument .....       | 1274 |
| In reply .....               | 1338 |
| Great Britain—               |      |
| Sir Robert Finlay—           |      |
| Opening argument .....       | 1199 |
| In reply .....               | 1302 |
| Arthur Cohen .....           | 1253 |
| H. Erle Richards .....       | 1263 |
| Germany—                     |      |
| M. Buenz .....               | 1178 |

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PART I.

**Final Report of Hon. William L. Penfield,**

AGENT OF THE UNITED STATES.

**Protocols Between Venezuela and the Creditor States, Protocols  
of Proceedings at The Hague, Decision of the Tribunal,  
List of Documents Presented to the Tribunal  
for Consideration in the Case, etc.**

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## LETTER OF TRANSMITTAL

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**THE SENATE AND HOUSE OF REPRESENTATIVES :**

I transmit herewith a communication from the Secretary of State covering the report of the agent of the United States in the arbitration of the Venezuelan cases before The Hague Tribunal, with accompanying appendixes.

The attention of Congress is invited to the request of the Secretary of State that 500 copies of the report and appendixes be printed for the use of the Department of State.

**THEODORE ROOSEVELT.**

**THE WHITE HOUSE,**

*January 23, 1905.*





## LETTER OF SUBMITTAL.

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The PRESIDENT:

I have the honor to lay before the President, with a view to its transmission to Congress, the report of the agent of the United States in the arbitration of the Venezuelan cases before The Hague Tribunal.

I respectfully request that Congress authorize the printing and binding of 500 copies of the report and its appendixes for the use of the Department of State.

Respectfully submitted.

JOHN HAY.

DEPARTMENT OF STATE,

*Washington, January 21, 1905.*

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### LIST OF ACCOMPANIMENTS.

1. Report of the agent of the United States (with appendixes).
2. Cases of Venezuela (with appendixes), the United States, Great Britain, Germany, Italy, Belgium, France, the Netherlands, Spain, Sweden and Norway; British Blue Book of 1903.
3. Counter cases of Venezuela, Great Britain, Germany, Italy, Belgium, France, Spain, the Netherlands, Sweden and Norway.
4. Oral arguments on behalf of the United States, Great Britain, and Germany.



## FINAL REPORT OF THE AGENT OF THE UNITED STATES IN THE VENEZUELAN ARBITRATION OF 1903 BEFORE THE HAGUE TRIBUNAL.

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WASHINGTON, *May 15, 1904.*

SIR: I have the honor to submit the following report of the proceedings of The Hague Tribunal in the arbitration between Great Britain, Germany, and Italy on one side, and on the other Venezuela, the United States, Mexico, Spain, France, Belgium, the Netherlands, and Sweden and Norway.

The arbitration had its origin in a controversy which arose over certain pecuniary claims of the subjects of Great Britain, Germany, and Italy against the Republic of Venezuela. A solution not having been reached by the diplomatic negotiations, the controversy culminated on December 11, 1902, in the ordering by Great Britain of a blockade of the ports of Venezuela. Two days afterwards Venezuela offered to submit the controversy to arbitration. This offer was ignored, and seven days later the blockade of the Venezuelan ports was declared by the British, German, and Italian Governments. The negotiations between the blockading powers and Venezuela had been prolonged, and the first offer from Venezuela to submit the matter to arbitration was made on December 13, 1902.

The United States, at the same time, had claims of long standing against Venezuela, which had been presented against the latter and had been the subject of much discussion between the two Governments. Mexico, Spain, France, Belgium, the Netherlands, and Sweden and Norway also held claims against Venezuela which had been the subject of more or less diplomatic negotiation; but no forcible measures had been employed by these Governments to secure the adjustment of their claims.

Mr. Herbert W. Bowen, the United States minister to Caracas, was appointed by Venezuela with full powers to negotiate with the representatives of the creditor powers a settlement of the entire matters in controversy. The negotiations took place at Washington during the winter and spring of 1903 between the plenipotentiary of Venezuela and the diplomatic representatives of the several creditor powers.

In the course of his negotiations with the representatives of the blockading powers, Mr. Bowen, on January 23, 1903, placed in the hands of the British ambassador the following offer:

Mr. Bowen proposes that all claims against Venezuela shall be paid out of the customs receipts of the two ports of La Guaira and Puerto Cabello, the percentage to be 30 per cent each month of the receipts. In case of the failure on the part of Venezuela to pay the said 30 per cent the creditor nations will be authorized to put, with the consent and without any opposition on the part of Venezuela, Belgium customs officials in charge of the said two custom-houses and to administer them until the entire foreign debt is paid.

On the same day, in answer to a request of Mr. Bowen that the blockade be raised, the representatives of the blockading powers stated the terms on which the blockade would be raised. The British Government stipulated, first, for the cash payment of certain claims—styled first-rank claims—in the sum of £5,500; second, other claims for compensation, including railway claims and those for injury or wrongful seizure of property, must be met by immediate payment to His Majesty's Government or by a guaranty adequate to secure them. These claims to be submitted to a mixed commission.

The terms imposed by the German Government were of similar import to those demanded by the British Government, except that the cash payment was to be over \$400,000. The same terms and cash payment were demanded by the Italian Government as those named by Great Britain.

On January 24 Lord Lansdowne inquired whether it was proposed "that the 30 per cent should be paid to the blockading powers only, or are the whole of the creditor powers also to share the benefit?" He took the position that the claims of the blockading powers should not rank on the same line with other claims for compensation. Mr. Bowen answered, on January 27, that it was impossible to give to the blockading powers priority over other creditor powers in the payment

of their claims; and on the same day he made an assignment of 30 per cent of the revenues of the two principal Venezuelan ports in the following terms:

I hereby agree that Venezuela will pay 30 per cent of the total income of the ports of La Guaira and Puerto Cabello to the nations that have claims against her, and it is distinctly understood that the said 30 per cent will be given exclusively to meet the claims mentioned in the recent ultimatums of the allied powers and the unsettled claims of other nations that existed when the said ultimatums were presented.

On January 28 Lord Lansdowne declared that—

His Majesty's Government can not admit that pledges given by Mr. Bowen to the powers which are not engaged in the blockade are binding on this country. His Majesty's Government can not accept a settlement which would force them to place their claims on the same footing as those of the nonblockading powers.

Mr. Bowen declined to accept this view, and it was agreed by Venezuela and the blockading powers to refer the question to the determination of The Hague Tribunal.

#### THE ISSUES.

The issues to be tried were stated in somewhat varying terms in the different and successive protocols signed between Venezuela and the creditor powers. In the protocols signed on February 13, 1903, between Venezuela and the blockading powers, the issue was stated in substantially the same terms in the German and Italian protocols as it was in the British protocol, which reads as follows:

The Venezuelan Government being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in article 3, and similar claims preferred by other governments, undertake to assign to the British Government, commencing the 1st day of March, 1903, for this purpose, 30 per cent in monthly payments of the customs revenues of La Guaira and Puerto Cabello. \* \* \*

Any question as to the distribution of the customs revenues so to be assigned and as to the rights of Great Britain, Germany, and Italy to a separate settlement of their claims shall be determined, in default of arrangement, by the tribunal at The Hague, to which any other power interested may appeal. Pending the decision of The Hague Tribunal the said 30 per cent of the receipts of the customs of the ports of La Guaira and Puerto Cabello are to be paid over to the representatives of the Bank of England at Caracas.

The protocol of February 17, 1903, between the United States and Venezuela, for the creation of a mixed claims commission at Caracas, stated the issue which was to be submitted to The Hague Tribunal as follows:

In order to pay the total amount of the claims to be adjudicated as aforesaid (at Caracas) and other claims of citizens or subjects of other nations, the Government of Venezuela shall set apart for this purpose, and alienate to no other purpose, beginning with the month of March, 1903, 30 per cent in monthly payments of the customs revenues of La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decision of The Hague Tribunal.

The issues as finally formulated and submitted in the protocols signed on May 7, 1903, between Venezuela and the blockading powers, were stated as follows:

ARTICLE I. The question as to whether or not Great Britain, Germany, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal in that case shall consider, in connection with the payment of the claims out of the 30 per cent, any preference or pledges of revenue enjoyed by any of the creditor powers, and shall accordingly decide the questions of distribution so that no power shall obtain preferential treatment, and its decision shall be final.

In accordance with the provision of Article VI of the protocols, the other creditor powers joined as parties to the arbitration. The litigating States consisted of Venezuela, the United States, Mexico, Spain, France, Belgium, the Netherlands, Sweden and Norway, Great Britain, Germany, and Italy—eleven in all.

#### THE AWARD.

The tribunal awarded to the blockading powers the preferential payment of their claims over those of the other creditor States against



Venezuela out of the 30 per cent of the customs revenues of the ports of La Guaira and Puerto Cabello.

It was conceded by counsel on both sides that the law of nations afforded no clear rule for the decision of the controversy. No such case had ever before arisen, and in the course of the trial neither the counsel nor the arbitrators were able to cite any authority, either from decisions of arbitral tribunals or from the writings of publicists, which was plainly applicable to the case. The collection of the Chinese indemnity, growing out of the Boxer movement in 1900, was most nearly in point, and was earnestly urged by counsel for the United States in support of the principle of equality of treatment of creditor States.

The force and value of the award as a precedent can not yet be justly measured. By some it may be approved as giving to the blockading powers the just reward of their military exertions by securing the prompt payment of their claims, while leaving the other creditor States free to secure in their own way the payment of their claims. By others the award may be regarded as a premium on war, as inconsistent with the spirit of The Hague Convention, and as tending to incite armed conflicts between creditor States having claims against a common debtor. If the latter view, which was urged to the tribunal by the counsel for the United States, is correct, the injurious effects of the award as a precedent will be limited by other and later arbitral decisions and by the action of public opinion.

The arbitrators signed the award on February 22, 1904. The president of the tribunal thereupon called on the secretary-general of the tribunal to read the award in open session. Immediately after the award was read, and before this last session of the tribunal was closed, the president of the tribunal delivered an allocution touching on the war which had broken out in the Far East after the rupture of diplomatic relations between Russia and Japan on February 6, 1904. Not until after the conclusion of his address did the president declare the session closed and the tribunal of arbitration formally dissolved. In giving a faithful report of the arbitration proceedings from the beginning to the end, it is a painful duty to record the fact that this allocution was thus made a part of the proceedings. The speaker declared:

Obviously, it is neither the time nor the place for politics, and *we will not treat of politics*; but I may be permitted to speak a few

words before closing this grand manifestation of the conciliatory spirit of nations and give expression to some personal considerations on the subject of recent events which have also so unfavorably changed the circumstances under which we first met within these hospitable walls. \* \* \* We aspire to peace with all the strength of our soul, and labor for it assiduously with conviction and fervor and, nevertheless, we are not safe from a hostile challenge—from an unexpected attack. We sincerely desire the maintenance of peace and we are forced to accept courageously a war of legitimate self-defense in the name of the honor and dignity of our country. In this painful conflict of heart and duty there remains one supreme consolation—ardent and absolute faith in the just Providence of peoples and of battles, who will know how to distinguish between valid right and ambitious pretensions, between calm resolution and immovable constancy on the one hand, and war-like zeal and passionate ardor on the other. But when the tempest which throws the two currents, European and Asiatic, into such violent collision shall have passed—and everything passes in this world—then we religiously believe the thick clouds which have darkened our horizon will be scattered.

Considering the character of the tribunal, the exalted position of the speaker, and the occasion on which the address was delivered, it was received with a painful feeling of surprise, not unmixed with apprehension as to its possible effects on the future workings of the tribunal. Inasmuch as it was made a part of the permanent record of the proceedings, it seems proper to annex to this report the formal protest of the Japanese Government, filed with the secretary-general on February 27, 1904, against the use of the high court for the purpose of “attacking the action, motives, or good name of any power signatory of The Hague Convention.”

The award provided that each party to the litigation should pay its own costs and an equal share of the costs of the tribunal, and charged the United States Government with seeing to the payment of all these costs within three months from the date of the award. This portion of the award was calculated to place the United States Government in an embarrassing position. The protocols had conferred upon the tribunal no authority to delegate to the United States Government the duty and the power to require the litigant States to pay their respective shares of the ordinary costs of the litigation and of the compensation of the arbitrators. Accordingly, the Government of the United States had to decline to undertake the delicate task

with which it had been honored by the mandate of the tribunal. It is a pleasure to be able to report that all of the interested States have fully acquitted themselves of their respective liabilities for the costs of the litigation and for the honorarium of the arbitrators.

#### THE PROCEDURE.

Under the protocols of May 7 the Russian Emperor was to appoint from the members of the permanent court three arbitrators, none of whom should be a citizen or subject of the creditor States, and who were to meet on September 1, 1903, and render their decision within six months thereafter. The protocols declared that the proceedings should be carried on in the English language, but arguments might, with the permission of the tribunal, be made in any other language also.

Although the United States and Venezuela promptly notified the Russian Government of the making of the protocols and requested the appointment of the arbitrators by the Emperor, His Imperial Majesty did not appear to have been seasonably notified by certain other of the arbitrating States. On September 1 only one arbitrator appeared at The Hague, Mr. N. V. Mouraviev, the minister of justice and attorney-general of the Russian Empire. An adjournment was informally taken. On October 1, 1903, two other arbitrators having been duly appointed, the tribunal assembled and organized. The other arbitrators named were Professor Lammasch, member of the Upper House of the Austrian Parliament, and Mr. de Martens, permanent member of the council of the imperial ministry of foreign affairs at St. Petersburg. Mr. Mouraviev was chosen as president of the tribunal and formally declared its sessions opened.

When the tribunal opened its sessions on October 1, Venezuela submitted its preliminary examination to the tribunal, and on October 5 the tribunal adjourned its sittings to November 4. The interval was given for the preparation and submission by the other States of their preliminary examinations and to their study by the tribunal. The oral arguments occupied twelve days in all. They were made, under the ruling of the tribunal, in the alphabetical order of States, as follows: Belgium, France, Germany, Great Britain, Italy, Mexico, the Netherlands, Spain, Sweden and Norway, the United States, and Venezuela. Opening arguments were permitted to be made in

English or French, by all the counsel if they chose to do so, but the replies were limited to one counsel for each of the parties. Notwithstanding the plain provision of the protocol that the proceedings should be conducted in the English language, the preliminary notices of the tribunal were issued in the French language.

The president of the tribunal used the French language exclusively during the entire proceedings. The delegates of the French Government contended for the use of French as the official language. The counsel for Venezuela and the United States, as well as those of Great Britain and Germany, contended that the terms of the protocols had settled the question in advance. The tribunal finally decided to recognize the English as the official language of the proceedings and the French language as subsidiary, and equally authentic, on the ground that it was familiar to the arbitrators and to the majority of the representatives. The oral arguments of counsel were permitted to be made in English or French only, while the record of the proceedings was made up in both languages.

The agent appointed by the French Government to represent it before the tribunal was the legal adviser of its foreign office and happened to be a member of the permanent court. The counsel for Venezuela filed with the International Bureau their objections to the establishment of precedents which might seem to sanction the appearance of members of the permanent court as counsel before The Hague Tribunal, which was made up of members appointed from that court.

In the two cases which have been submitted to The Hague Tribunal members of the permanent court have appeared as counsel. In the Pious fund case the Mexican Government employed a member of the permanent panel as one of its advocates. Thereupon the American claimant employed another member of the panel as one of his counsel. This counsel was not employed by the United States Government, but as an act of favor to the claimant he was permitted to appear.

These incidents recall the efforts made by Lord Pauncefote to disqualify by The Hague Convention members of the permanent court from acting as counsel before the tribunal. Some of the more obvious objections to this practice were stated in a protest which was filed with the tribunal by the counsel for Venezuela in the recent arbitration. The stated grounds of objection were that "such per-

sons, owing to their presumed acquaintance with other members of the tribunal in advance of its meeting and of their presumed fitness to express weighty opinions, might be supposed to possess certain advantages over counsel not so situated, and this conviction might lead litigants to suppose that a proper protection of their interests required them to retain some member of the court as counsel in a given case." The second objection urged was that suspicion might attach itself to the proceedings before the tribunal and that a decision in favor of a member of the tribunal acting as counsel in one instance might exert more weight when the counsel of yesterday, who received a favorable decision, is himself a judge to-day, and the judge of yesterday is appearing as counsel before him. Finally, the protestants expressed the opinion that the practice, if permitted, would impair the reputation of the permanent court for disinterestedness and impartiality.

Notice of this action of counsel was taken by the British Government, which also entered a protest against the appointment of a member of the permanent court to act as counsel in the Venezuelan arbitration. The protest declared it to be "of the utmost importance that the impartiality of the members of the court, who may be called upon to act as judges, should remain beyond all possibility of suspicion, and the force of the objections to their acting as advocates is greatly increased by the fact that the number of possible litigants is limited, while the questions to be decided will constantly affect the interests of a large number, or even of all, of these litigants. Unless precautions are taken to guard against such a contingency, members of the court will continually find themselves called upon to deal as judges with the interests of those who have been their clients in the not remote past or may become their clients in the not remote future."

This protest drew from the French Government a formal answer. It declared that it had designated its agent to represent it before the tribunal, and that this designation was conformable to its rights. It referred to article 37 of The Hague Convention, which leaves to the parties entire liberty to choose their own agents and counsel. It referred to a report made by a committee on the subject to The Hague Conference, in which it appeared that certain members considered it important to debar members of the permanent panel from

Serial  
4769



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His Majesty's Government will be prepared to restore the vessels of the Venezuelan navy which have been seized, and further to release any other vessels captured under the Venezuelan flag, on the receipt of a guarantee from the Venezuelan Government that they will hold His Majesty's Government indemnified in respect of any proceedings which might be taken against them by the owners of such ships or of goods on board them.

#### ARTICLE IX.

The treaty of amity and commerce of October 29, 1834, having been confirmed in accordance with the terms of Article VII of this protocol, His Majesty's Government will be happy to renew diplomatic relations with the Government of Venezuela.

Done in duplicate at Washington, this 13th day of February, 1903.

(Signed)

MICHAEL H. HERBERT.

(Signed)

HERBERT W. BOWEN.

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#### PROTOCOL BETWEEN ITALY AND VENEZUELA RELATING TO THE SETTLEMENT OF ITALIAN CLAIMS.

---

*Signed at Washington, February 13, 1903.*

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Whereas certain differences have arisen between Italy and the United States of Venezuela in connection with the Italian claims against the Venezuelan Government, the undersigned, His Excellency Nobile Edmondo Mayor des Planches, commander of the Orders of SS. Maurice and Lazarus and the Crown of Italy, ambassador extraordinary and plenipotentiary of His Majesty the King of Italy to the United States of America, and Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela, have agreed as follows:

#### ARTICLE 1.

The Venezuelan Government declare that they recognize in principle the justice of the claims which have been preferred by His Majesty's Government on behalf of Italian subjects.

#### ARTICLE 2.

The Venezuelan Government agree to pay to the Italian Government, as a satisfaction of the point of honor, the sum of £5,500 (five thousand five hundred pounds sterling), in cash or its equivalent, which sum is to be paid within sixty days.



ARTICLE 3.

The Venezuelan Government recognize, accept, and will pay the amount of the Italian claims of the first rank derived from the revolutions of 1898-1900, in the sum of 2,810,255 (two millions eight hundred and ten thousand two hundred and fifty-five) bolivares.

It is expressly agreed that the payment of the above Italian claims of the first rank will be made without being the same claims or the same sum submitted to the mixed commission and without any revision or objection.

ARTICLE 4.

The Italian and Venezuelan Governments agree that all the remaining Italian claims, without exception, other than those dealt with in Article VII hereof, shall, unless otherwise satisfied, be referred to a mixed commission to be constituted, as soon as possible, in the manner defined in Article VI of the protocol, and which shall examine the claims and decide upon the amount to be awarded in satisfaction of each.

The Venezuelan Government admit their liability in cases where the claim is for injury to persons and property and for wrongful seizure of the latter, and consequently the questions, which the mixed commission will have to decide in such cases, will only be:

(a) Whether the injury took place or whether the seizure was wrongful; and

(b) If so, what amount of compensation is due.

In other cases the claims will be referred to the mixed commission without reservation.

ARTICLE 5.

The Venezuelan Government being willing to provide a sum sufficient for the payment, within a reasonable time, of the claims specified in Articles III and IV and similar claims preferred by other governments, undertake and obligate themselves to assign to the Italian Government, commencing the first day of March, 1903, for this purpose, and to alienate to no other purpose, 30 per cent of the custom revenues of La Guayra and Puerto Cabello. In the case of failure to carry out this undertaking and obligation, Belgian officials shall be placed in charge of the two ports, and shall administer them until the liabilities of the Venezuelan Government, in respect of the above-mentioned claims, shall have been discharged.

Any question as to the distribution of the custom revenues so to be assigned, and as to the rights of Italy, Great Britain, and Germany to a separate settlement of their claims, shall be determined, in default of arrangement, by the tribunal at The Hague, to which any other power interested may appeal.

Pending the decision of The Hague Tribunal the said 30 per cent of the receipts of the customs of the ports of La Guayra and Puerto Cabello are to be paid over to the representatives of the Bank of England at Carácas.

#### ARTICLE 6.

The mixed commission shall consist of one Italian member and one Venezuelan member.

The Government of Venezuela hereby obligate themselves and guarantee that the Italian Government shall be wholly exempted and relieved from any reclamations or claims of any kind which may be made by citizens or corporations of Venezuela or by citizens or corporations of any other nation, for detention, or seizure, or destruction of any vessel, or of goods on board of them which may have been or which may be detained, seized, or destroyed by reason of the blockade instituted and carried on by the three allied powers against the Republic of Venezuela.

In each case, where they come to an agreement, their decision shall be final. In case of disagreement, the claims shall be referred to the decision of an umpire nominated by the President of the United States of America.

#### ARTICLE 7.

The Venezuelan Government further undertake to enter into a fresh arrangement respecting the external debt of Venezuela with a view to the satisfaction of the claims of the bondholders. This arrangement shall include a definition of the sources from which the necessary payments are to be provided.

#### ARTICLE 8.

The treaty of amity, commerce, and navigation between Italy and Venezuela of June 19<sup>th</sup>, 1861, is renewed and confirmed. It is, however, expressly agreed between the two Governments that the interpretation to be given to the articles 4 and 26 is the following:

According to the article 4, Italians in Venezuela and Venezuelans in Italy cannot in any case receive a treatment less favorable than the natives, and, according to article 26, Italians in Venezuela and Venezuelans in Italy are entitled to receive, in every matter and especially in the matter of claims, the treatment of the most favored nation, as it is established in the same article 26.

If there is doubt or conflict between the two articles, the article 26 will be followed.

It is further specifically agreed that the above treaty shall never be invoked, in any case, against the provisions of the present protocol.

#### ARTICLE 9.

At once upon the signing of this protocol, arrangements shall be made by His Majesty's Government, in concert with the Governments

of Germany and Great Britain, to raise the blockade of the Venezuelan ports.

His Majesty's Government will be prepared to restore the vessels of the Venezuelan navy which may have been seized, and further to release any other vessel captured under the Venezuelan flag during the blockade.

ARTICLE 10.

The treaty of amity, commerce, and navigation of June 19th, 1861, having been renewed and confirmed in accordance with the terms of Article VIII of this protocol, His Majesty's Government declare that they will be happy to reestablish regular diplomatic relations with the Government of Venezuela.

WASHINGTON, D. C., *13th February, 1903.*

(Signed)

E. MAYOR DES PLANCHES.

(Signed)

HERBERT W. BOWEN.

We interpret our three protocols to mean that the 30 per cent referred to therein of the total income of the custom-houses of La Guaira and Puerto Cabello shall be delivered to the representative of the Bank of England at Carácas, and that the said 30 per cent is not assigned to any one power but it is to be retained by the said representative of the Bank of England in Carácas and paid out by him in conformity with the decision rendered by the tribunal at The Hague.

WASHINGTON. *February 14th, 1903.*

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PROTOCOLS OF AGREEMENTS BETWEEN VENEZUELA AND GREAT BRITAIN, GERMANY, AND ITALY, TO WHICH THE UNITED STATES AND OTHER POWERS ARE PARTIES, RESPECTING THE REFERENCE OF THE QUESTION OF THE PREFERENTIAL TREATMENT OF CLAIMS TO THE TRIBUNAL AT THE HAGUE.

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*Signed at Washington May 7, 1903.*

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Whereas protocols have been signed between Venezuela on the one hand and Great Britain, Germany, Italy, United States of America, France, Spain, Belgium, the Netherlands, Sweden and Norway, and Mexico on the other hand, containing certain conditions agreed upon for the settlement of claims against the Venezuelan Government;

And whereas certain further questions arising out of the action taken by the Governments of Great Britain, Germany, and Italy, in

connection with the settlement of their claims, have not proved to be susceptible of settlement by ordinary diplomatic methods;

And whereas the powers interested are resolved to determine these questions by reference to arbitration in accordance with the provisions of the convention for the pacific settlement of international disputes, signed at The Hague on the 29th July, 1899;

The Governments of Venezuela and Great Britain have, with a view to carry out that resolution, authorized their representatives—that is to say:

For Venezuela Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela, and for Great Britain His Excellency Sir Michael Henry Herbert, G. C. M. G., C. B., His Britannic Majesty's ambassador extraordinary and plenipotentiary to the United States of America, to conculde the following agreement:

#### ARTICLE I.

The question as to whether or not Great Britain, Germany, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal in that case shall consider, in connection with the payment of the claims out of the 30 per cent, any preference or pledges of revenue enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution so that no power shall obtain preferential treatment, and its decision shall be final.

#### ARTICLE II.

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the tribunal may determine.

#### ARTICLE III.

The Emperor of Russia shall be invited to name and appoint from the members of the permanent court of The Hague three arbitrators to constitute the tribunal which is to determine and settle the ques-

tions submitted to it under and by virtue of this agreement. None of the arbitrators so appointed shall be a citizen or subject of any of the signatory or creditor powers.

This tribunal shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

ARTICLE IV.

The proceedings shall be carried on in the English language, but arguments may, with permission of the tribunal, be made in any other language also.

Except as herein otherwise stipulated, the procedure shall be regulated by the convention of The Hague of July 29, 1899.

ARTICLE V.

The tribunal shall, subject to the general provision laid down in article 57 of the international convention of July 29, 1899, also decide how, when, and by whom the costs of this arbitration shall be paid.

ARTICLE VI.

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this agreement.

Done at Washington this seventh day of May, 1903.

[SEAL.]

HERBERT W. BOWEN.

[SEAL.]

MICHAEL H. HERBERT.

The undersigned nations having claims against Venezuela hereby join with her as parties in the arbitration provided for in the foregoing protocol.

For the United States of America,

JOHN HAY.

For the Republic of Mexico,

[SEAL.]

M. DE AZPIROZ.

For Sweden and Norway,

[SEAL.] MAY 27, 1903.

A. GRIP.

L'Ambassadeur de France, dûment autorisé et agissant au nom de son Gouvernement adhère au protocole ci-dessus, sous réserve qu'il est bien entendu que l'Article IV du dit protocole ne fera pas obstacle à l'application de la disposition de l'article 38 de l'acte de La Haye, aux termes de laquelle c'est le tribunal arbitral qui décide du choix des langues dont il fera usage et dont l'emploi sera autorisé devant lui.

1 JUIN, 1903.

[SEAL.]

JUSSERAND.

Le Ministre de Belgique, dûment autorisé et agissant au nom de son Gouvernement adhère au protocole ci-dessus.

12 JUIN, 1903.

[SEAL.]

B<sup>N</sup> MONCHEUR.

Le Ministre des Pays-Bas, dûment autorisé et agissant au nom de son Gouvernement adhère au protocole ci-dessus.

WASHINGTON, *le 13 Juin, 1903.*

[SEAL.]

GEVERS.

Whereas protocols have been signed between Germany, Great Britain, Italy, the United States of America, France, Spain, Belgium, the Netherlands, Sweden and Norway, and Mexico on the one hand, and Venezuela on the other hand, containing certain conditions agreed upon for the settlement of claims against the Venezuelan Government;

And whereas certain further questions arising out of the action taken by the Governments of Germany, Great Britain, and Italy, in connection with the settlement of their claims, have not proved to be susceptible of settlement by ordinary diplomatic methods;

And whereas the powers interested are resolved to determine these questions by reference to arbitration in accordance with the provisions of the convention for the pacific settlement of international disputes, signed at The Hague on the 29th July, 1899;

Venezuela and Germany have, with a view to carry out that resolution, authorized their representatives, that is to say:

Mr. Herbert W. Bowen as plenipotentiary of the Government of Venezuela and

The imperial German minister, Baron Speck von Sternburg, as representative of the imperial German Government to conclude the following agreement:

#### ARTICLE I.

The question as to whether or not Germany, Great Britain, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guayra and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal in that case shall consider in connection with the

payment of the claims out of the 30 per cent any preference or pledges of revenue enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution so that no power shall obtain preferential treatment, and its decision shall be final.

The facts on which shall depend the decision of the questions stated in article 1 shall be ascertained in such manner as the tribunal may determine.

ARTICLE 3.

The Emperor of Russia shall be invited to name and appoint from the members of the permanent court of The Hague three arbitrators to constitute the tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement. None of the arbitrators so appointed shall be a subject or citizen of any of the signatory or creditor powers.

This tribunal shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

ARTICLE 4.

The proceedings shall be carried on in the English language, but arguments may, with the permission of the tribunal, be made in any other language also. Except as herein otherwise stipulated, the procedure shall be regulated by the convention of The Hague of July 29th, 1899.

ARTICLE 5.

The tribunal shall, subject to the general provision laid down in article 57 of the international convention of July 29, 1899, also decide how, when, and by whom the cost of this arbitration shall be paid.

ARTICLE 6.

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this agreement.

Done in duplicate at Washington this seventh day of May, one thousand and nine hundred and three.

[SEAL.]

[SEAL.]

HERBERT W. BOWEN.

STERNBURG.

The undersigned nations having claims against Venezuela hereby join with her as parties in the arbitration provided for in the foregoing protocol.

For the United States of America,

JOHN HAY.

For the Republic of Mexico,

[SEAL.]

M. DE AZPIROZ.

For Sweden and Norway,

[SEAL.] MAY 27, 1903.

A. GRIP.



L'Ambassadeur de France, dûment autorisé et agissant au nom de son Gouvernement, adhère au Protocole ci-dessus, sous réserve qu'il est bien entendu que l'article IV dudit protocole ne fera pas obstacle à l'application de la disposition de l'article 38 de l'acte de La Haye, aux termes de laquelle c'est le tribunal arbitral qui décide du choix des langues dont il fera usage et dont l'emploi sera autorisé devant lui.

1<sup>er</sup> JUIN 1903.

[SEAL.]

JUSSERAND.

Le Ministre de Belgique, dûment autorisé et agissant au nom de son Gouvernement adhère au protocole ci-dessus.

12 JUIN 1903.

[SEAL.]

BN. MONCHEUR.

Le Ministre des Pays-Bas dûment autorisé et agissant au nom de son Gouvernement adhère au protocole ci-dessus.

WASHINGTON, *le 13 Juin, 1903.*

[SEAL.]

GEVERS.

Whereas protocols have been signed between Venezuela, on the one hand, and Italy, Great Britain, Germany, United States of America, France, Spain, Belgium, The Netherlands, Sweden and Norway, and Mexico, on the other hand, containing certain conditions agreed upon for the settlement of claims against the Venezuelan Government;

And whereas certain further questions arising out of the action taken by the Governments of Italy, Germany, and Great Britain in connection with the settlement of their claims, have not proved to be susceptible of settlement by ordinary diplomatic methods;

And whereas the powers interested are resolved to determine these questions by reference to arbitration in accordance with the provision of the convention for the pacific settlement of international disputes signed at The Hague on the 29th July, 1899;

The Governments of Venezuela and Italy, with a view to carry out that resolution, authorized their representatives, that is to say:

For Venezuela, Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela;

For Italy, His Excellency Nobile Edmondo Mayor des Planches, His Majesty the King of Italy's ambassador extraordinary and plenipotentiary to the United States of America;

to conclude the following agreement:

#### ARTICLE I.

The question as to whether or not Italy, Germany, and Great Britain are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside 30 per cent of the customs



revenues of La Guayra and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand, and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal in that case shall consider, in connection with the payment of the claims out of 30 per cent, any preference or pledges of revenues enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution so that no power shall obtain preferential treatment, and its decision shall be final.

#### ARTICLE II.

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the tribunal may determine.

#### ARTICLE III.

The Emperor of Russia shall be invited to name and appoint from the members of the Permanent Court of The Hague three arbitrators to constitute the tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement.

None of the arbitrators so appointed shall be a citizen or a subject of any of the signatory or creditor powers.

This tribunal shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

#### ARTICLE IV.

The proceedings shall be carried on in the English language, but arguments may, with the permission of the tribunal, be made in any other language also.

Except as herein otherwise stipulated, the procedure shall be regulated by the convention of The Hague of July 29th, 1899.

#### ARTICLE V.

The tribunal shall, subject to the general provision laid down in article 57 of the international convention of July 29th, 1899, also decide how, when, and by whom the costs of this arbitration shall be paid.

#### ARTICLE VI.

Any nation having claims against Venezuela may join, as a party, in the arbitration provided for by this agreement.

WASHINGTON, D. C., *May 7, 1903.*

HERBERT W. BOWEN. [SEAL.]  
E. MAYOR DES PLANCHES. [SEAL.]

The undersigned nations having claims against Venezuela hereby join with her as parties in the arbitration provided for in the foregoing protocol.

For the United States of America,

JOHN HAY.

For the Republic of Mexico,

[SEAL.]

M. DE AZPIROZ.

For Sweden and Norway,

[SEAL.] MAY 27, 1903.

A. GRIP.

L'Ambassadeur de France, dûment autorisé et agissant au nom de son Gouvernement, adhère au protocole ci-dessus, sous réserve qu'il est bien entendu que l'Article IV dudit protocole ne fera pas obstacle à l'application de la disposition de l'article 38 de l'acte de La Haye, aux termes de laquelle c'est le tribunal arbitral qui décide du choix des langues dont il fera usage et dont l'emploi sera autorisé devant lui.

1<sup>er</sup> JUIN, 1903.

[SEAL.]

JUSSERAND.

Le Ministre de Belgique, dûment autorisé et agissant au nom de son Gouvernement adhère au protocole ci-dessus.

12 JUIN, 1903.

[SEAL.]

BN. MONCHEUR.

Le Ministre des Pays-Bas, dûment autorisé et agissant au nom de son Gouvernement adhère au protocole ci-dessus.

WASHINGTON, le 13 Juin, 1903.

[SEAL.]

GEVERS.

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**PROTOCOL OF AN AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF VENEZUELA FOR SUBMISSION TO ARBITRATION OF ALL UNSETTLED CLAIMS AGAINST VENEZUELA.**

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*Signed at Washington, February 17, 1903.*

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*Protocol of an agreement between the Secretary of State of the United States of America and the Plenipotentiary of the Republic of Venezuela for submission to arbitration of all unsettled claims of citizens of the United States of America against the Republic of Venezuela.*

The United States of America and the Republic of Venezuela, through their representatives, John Hay, Secretary of State of the United States of America, and Herbert W. Bowen, the plenipotentiary of the Republic of Venezuela, have agreed upon and signed the following protocol.

## ARTICLE I.

All claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the commission hereinafter named by the Department of State of the United States or its legation at Caracas, shall be examined and decided by a mixed commission, which shall sit at Caracas, and which shall consist of two members, one of whom is to be appointed by the President of the United States and the other by the President of Venezuela.

It is agreed that an umpire may be named by the Queen of the Netherlands. If either of said commissioners or the umpire should fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. Said commissioners and umpire are to be appointed before the first day of May, 1903.

The commissioners and the umpire shall meet in the city of Caracas on the first day of June, 1903. The umpire shall preside over their deliberations, and shall be competent to decide any question on which the commissioners disagree. Before assuming the functions of their office the commissioners and the umpire shall take solemn oath carefully to examine and impartially decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the record of their proceedings. The commissioners, or, in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation.

The decisions of the commission, and in the event of their disagreement, those of the umpire, shall be final and conclusive. They shall be in writing. All awards shall be made payable in United States gold, or its equivalent in silver.

## ARTICLE II.

The commissioners, or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim, and to hear oral or written arguments made by the agent of each Government on every claim. In case of their failure to agree in opinion upon any individual claim the umpire shall decide.

Every claim shall be formally presented to the commissioners within thirty days from the day of their first meeting, unless the commissioners or the umpire in any case extend the period for pre-

senting the claim not exceeding three months longer. The commissioners shall be bound to examine and decide upon every claim within six months from the day of its first formal presentation, and in case of their disagreement, the umpire shall examine and decide within a corresponding period from the date of such disagreement.

### ARTICLE III.

The commissioners and the umpire shall keep an accurate record of their proceedings. For that purpose, each commissioner shall appoint a secretary versed in the language of both countries, to assist them in the transaction of the business of the commission. Except as herein stipulated, all questions of procedure shall be left to the determination of the commission, or in case of their disagreement, to the umpire.

### ARTICLE IV.

Reasonable compensation to the commissioners and to the umpire for their services and expenses, and the other expenses of said arbitration, are to be paid in equal moieties by the contracting parties.

### ARTICLE V.

In order to pay the total amount of the claims to be adjudicated as aforesaid and other claims of citizens or subjects of other nations the Government of Venezuela shall set apart for this purpose, and alienate to no other purpose, beginning with the month of March, 1903, thirty per cent in monthly payments of the customs revenues of La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decision of The Hague Tribunal.

In case of the failure to carry out the above agreement Belgian officials shall be placed in charge of the customs of the two ports and shall administer them until the liabilities of the Venezuelan Government in respect to the above claims shall have been discharged. The reference of the question above stated to The Hague Tribunal will be the subject of a separate protocol.

### ARTICLE VI.

All existing and unsatisfied awards in favor of citizens of the United States shall be promptly paid, according to the terms of the respective awards.

Washington, D. C., February 17, 1903.

JOHN HAY. [SEAL.]

HERBERT W. BOWEN. [SEAL.]

[Spanish text.]

*Protócolo de un Convenio entre el Secretario de Estado de los Estados de América y el Plenipotenciario de la República de Venezuela para la sumisión á arbitraje de todos las reclamaciones pendientes de ciudadanos de los Estados Unidos de América contra la República de Venezuela.*

Los Estados Unidos de América y la República de Venezuela, por medio de sus representantes, John Hay, Secretario de Estado de los Estados Unidos de América, y Herbert W. Bowen, Plenipotenciario de la República de Venezuela, han convenido en el siguiente protócolo, que han firmado.

#### ARTÍCULO I.

Todas las reclamaciones poseidas por ciudadanos de los Estados Unidos de América contra la República de Venezuela, que no hayan sido arregladas por la vía diplomática ó por arbitraje entre los dos Gobiernos, y que hubieren sido presentadas por el Departamento de Estado de los Estados Unidos ó por su Legación en Caracas á la Comisión abajo mencionada, serán examinadas y decididas por una Comisión Mixta, que celebrará sus sesiones en Caracas, y que se compondrá de dos miembros uno de los cuales será nombrado por el Presidente de los Estados Unidos, y el otro por el Presidente de Venezuela.

Se conviene en que un tercero en discordia podrá ser nombrado por la Reina de los Países Bajos. Si uno de dichos comisionados ó el tercero en discordia dejare de ejercer sus funciones, será nombrado en el acto su sucesor del mismo modo que el antecesor de éste. Dichos comisionados y tercero en discordia deben ser nombrados antes del día primero de mayo de 1903.

Los comisionados y el tercero en discordia se reunirán en la ciudad de Caracas el día primero de junio de 1903. El tercero en discordia presidirá sus deliberaciones, y tendrá facultad para dirimir cualquier cuestión sobre la que no puedan avenirse los comisionados. Antes de empezar á ejercer las funciones de su cargo, los comisionados y el tercero en discordia prestarán solemne juramento de examinar con cuidado, y de decidir imparcialmente, con arreglo á la justicia y á las estipulaciones de esta convención, todas las reclamaciones que se les sometieren, y tales juramentos se asentarán en su libro de actas. Los comisionados, ó en caso de que éstos no puedan avenirse, el tercero en discordia decidirá todas las reclamaciones con arreglo absoluto á la equidad, sin reparar en objeciones técnicas, ni en las disposiciones de la legislación local.

Las decisiones de la comisión, y en caso de su desavenencia, las del tercero en discordia, serán definitivas y concluyentes. Se extenderán por escrito. Todas las cantidades falladas serán pagaderas en moneda de oro de los Estados Unidos ó en su equivalente en plata.

## ARTÍCULO II.

Los comisionados ó el tercero en discordia, según el caso, investigarán y decidirán tales reclamaciones con arreglo únicamente á las pruebas ó informes suministrados por los respectivos Gobiernos, ó en nombre de éstos. Tendrán obligación de recibir y considerar todos los documentos ó exposiciones escritas que les fueren presentadas por los respectivos Gobiernos, ó en su nombre, en apoyo ó en refutación de cualquiera reclamación, y de oír los argumentos orales ó escritos que hiciere el agente de cada Gobierno sobre cada reclamación. En caso de que dejen de avenirse sus opiniones sobre cualquiera reclamación, decidirá el tercero en discordia.

Cada reclamación se presentará formalmente á los comisionados dentro de treinta días contados desde la fecha de su primera reunión, á menos que los comisionados ó el tercero en discordia prorroguen, en algún caso, por un término que no exceda de tres meses, el período concedido para presentar la reclamación. Los comisionados tendrán obligación de examinar y decidir todas las reclamaciones dentro de seis meses contados desde el día en que hubieren sido formalmente presentadas por primera vez, y en caso de su desavenencia, examinará y decidirá el tercero en discordia dentro de un período correspondiente contado desde la fecha de tal desavenencia.

## ARTÍCULO III.

Los comisionados y el tercero en discordia llevarán un registro exacto de todas sus deliberaciones y acuerdos. Para ese objeto, cada comisionado nombrará un secretario versado en el idioma de cada país para que le ayude en el despacho de los negocios que pendieren ante la comisión. Salvo las estipulaciones del presente protocolo, toda cuestión de procedimiento se remitirá á la resolución de la comisión, ó en caso de su desavenencia, á la del tercero en discordia.

## ARTÍCULO IV.

Una retribución equitativa será pagada por las partes contratantes, en partes iguales, á los comisionados y al tercero en discordia por sus servicios y gastos, y también se satisfarán de la misma manera, los demás gastos del arbitraje.

## ARTÍCULO V.

Con el fin de pagar el importe total de las reclamaciones que se hayan de decidir de la manera que queda dicha, y otras reclamaciones de ciudadanos ó súbditos de otros Estados, el Gobierno de Venezuela reservará, y no enajenará para ningún otro objeto (empezando desde el mes de marzo de 1903) un treinta por ciento, en pagos mensuales, de las rentas aduanales de la Guaira y Puerto Cabello, y el dinero así reservado será distribuido con arreglo al fallo del Tribunal de la Haya.



En caso de que no se cumpla el susodicho convenio, empleados belgas quedarán encargados del cobro de los derechos de aduana de ambos puertos, y los administrarán hasta que se hayan cumplido las obligaciones del Gobierno de Venezuela respecto de las referidas reclamaciones. La remisión al Tribunal de la Haya de la cuestión arriba expuesta será objeto de un protocolo separado.

ARTÍCULO VI.

Todas las sumas falladas á favor de ciudadanos de los Estados Unidos, que no se hayan satisfecho, serán pagadas con puntualidad, conforme á las disposiciones de los respectivos fallos.

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PROTOCOLS OF PROCEEDINGS.

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MEETING OF SEPTEMBER 1, 1903.

M. Ruyssenaers, as secretary-general of the Permanent Court of Arbitration, hereby certifies that to-day, on the 1st of September, 1903, in presence of His Excellency M. de Mouraviev, one of the arbitrators appointed by His Majesty the Emperor of Russia, in accordance with the protocol of the 7th May, 1903, the undermentioned agents met at The Hague at the Permanent Court of Arbitration representing, respectively, the undermentioned powers.

His Excellency M. Mouraviev apprised the meeting that he was the only arbitrator present, and that he could not say at what date the tribunal would be completed. In these circumstances the said agents, in the name of the Governments they respectively represented (with the exception of the agents of the Venezuelan Government) agreed unanimously that an adjournment was necessary and that the present proces-verbal should be drawn up, the agents of the Venezuelan Government, however, protesting against any statement being drawn up.

LIST OF THE AGENTS OF THE POWERS.

Germany, M. de Prollius; Spain, Marquis de Villasinda; United States, Mr. Wayne MacVeagh, Mr. Herbert W. Bowen, Mr. W. L. Penfield; France, M. Louis Renault; Great Britain, Mr. Arthur Larcom; Italy, Count A. De Bosdari; Netherlands and Sweden and Norway, M. de Weckherlin; Venezuela, Mr. Wayne MacVeagh, Mr. Herbert W. Bowen, Mr. W. L. Penfield.

Done at THE HAGUE, *the 1st of September, 1903.*

L. H. RUYSSENAERS,

*The Secretary-General of the Permanent Court of Arbitration.*

[French text.]

Monsieur Ruysenaers, en sa qualité de Secrétaire-Général de la Cour permanente d'Arbitrage, constate, par le présent écrit, qu'aujourd'hui, le 1<sup>er</sup> septembre 1903, en présence de Son Excellence M. de Mouraview, l'un des Arbitres désignés par Sa Majesté l'Empereur de Russie pour constituer le Tribunal arbitral conformément aux dispositions de l'article 3 des Protocoles du 7 mai 1903, les Agents suivants, MM. de Prollius (Allemagne), le Marquis de Villasinda (Espagne), MacVeagh, Bowen, Penfield (Etats-Unis d'Amérique), Louis Renault (France), Arthur Larcom (Grande Bretagne), le Comte de Bosdari (Italie), de Weckherlin (Pays-Bas, Suède et Norvège), MacVeagh, Bowen, Penfield (Vénézuéla), se sont réunis à la Haye dans l'Hôtel de la Cour permanente d'Arbitrage. Son Excellence Monsieur de Mouraview leur a fait connaître qu'il était le seul Arbitre présent à la Haye et qu'il le pouvait dire à quelle date le Tribunal arbitral serait complété. Dans ces circonstances, les dits Agents, au nom des Gouvernements qu'ils représentent, ont été, à l'exception des Agents du Vénézuéla, unanimes pour admettre qu'un ajournement était nécessaire. Ils sont convenus que le présent procès-verbal serait dressé, les Agents du Vénézuéla protestant contre la rédaction d'un écrit quelconque.

Ainsi fait à la Haye, le 1<sup>er</sup> septembre 1903.

L. H. RUYSSENAERS,

*Le Secrétaire-Général de la Cour permanente d'Arbitrage.*

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**PROTOCOL I.—MEETING OF THURSDAY, OCTOBER 1, 1903.**

The tribunal assembled at 3 p. m. at the Permanent Court of Arbitration.

The arbitrators present were:

His Excellency Mr. N. V. Mourawieff, secretary of state of His Imperial Majesty the Emperor of Russia, "Conseiller Privé Actuel," minister of justice and attorney-general of the Russian Empire;

Prof. H. Lammasch, doctor of law, member of the Upper House of the Austrian Parliament, and

His Excellency Mr. de Martens, "Conseiller Privé," permanent member of the council of the imperial ministry of foreign affairs at St. Petersburg.

Mr. de Mourawieff having been elected beforehand by his coarbiters as president, in declaring the tribunal open, spoke as follows:

"Appointed through the confidence of my esteemed colleagues to the signal honor of presiding over the Tribunal of Arbitration in the question of the regulation of the claims against the United States of Venezuela, I undertake this charge, arduous as it is flattering, with a fervent and sincere desire to acquit myself thereof to the best of my



ability, and I declare the tribunal duly constituted and its arbitral sittings opened by this its first meeting.

It is in virtue of the protocols, concluded at Washington in May of the present year between the states interested that this tribunal of three arbitrators, chosen by His Majesty the Emperor of Russia from among the members of the Permanent Court of Arbitration, at the request of the parties, has assembled. Owing to unexpected and unforeseen circumstances, by reason of the great number of the creditor, and consequently claimant, powers, whose delegates at the International Court could not, according to the agreement, act as judges in this litigation, difficulties arose in connection with the nomination of the arbitrators and a considerable delay ensued in the formation of the tribunal, which was to have assembled on the 1st of September. A new diplomatic understanding and a new imperial decision became necessary in order to effect an arrangement which should be in accordance with the stipulations of the original protocol. This unavoidable adjournment may have caused some personal inconvenience, but as it has now reached its end let us not stop to deplore it; the debates will thereby gain, perhaps, from this opportunity for longer preparation something more of those qualities of succinctness, combined with breadth and of strictness of proportion, which constitute the finest ornament of judicial pleading.

It is, in the first place, my pleasant duty to express, in the name of the tribunal, our gratitude to the members of the administrative council of the permanent court who have been so good as to honor by their presence the inauguration of the labors of the second tribunal which is due to the establishment of this court. Secondly, I beg to address a word of cordial welcome to the distinguished representatives of the parties before this tribunal, as well as to the eminent counsel who will assist it by their knowledge in the deliberations whose object is our enlightenment. I venture to express the hope that so complex and important a task as that before us now may be facilitated by a careful and mutually considerate collaboration, and I am convinced that, to the best of our ability, we shall all approach it with an equal earnestness and a united impulse toward truth and justice.

It seems to me almost superfluous at this solemn moment to draw the attention of this illustrious assembly to the deep significance of this new manifestation of the world's judicial action, which has become permanent and regular since the day when the nations of the civilized world, in promulgating The Hague Convention, proclaimed equity as the supreme ideal arbiter of their differences, if not of their destinies. And what more, indeed, could one add to this superb evidence, except that we note with profoundest satisfaction the daily increasing sympathies of entire peoples and of the elite of human

societies for the generous thought of international arbitration—that faithful organ and mighty rampart of peace—that we are happy to have been selected to advance one more step onward in the progressive march of this pregnant and living principle, through the thorns and brambles of a newly opened way, in spite of the many obstacles that are scattered in its path. Nevertheless, I should reproach myself were I to pass over in silence the peculiarly lofty significance of the present assembly. It is, in order of date, the second meeting held in accordance with the provisions of the convention of July 29, 1899, but it is the first due to the assent and participation of the majority of the European powers of the Old World, in general so slow to depart from ancient practice and traditional procedure. And this fact it is that in a singular measure sets forth and emphasizes the especially exceptional importance of our arbitral mission that to-day for the first time that mission appears in its sublimest conception, in its highest application, that of checking and curbing the sanguinary calamities of war. Let us never forget that the cannon, already rumbling on the coasts of a small, distant land, was replaced by the pacific methods of the jurist, and that Violence fell back and bowed—may she do so always—before the face of Justice.

He then requested Jonkheer L. H. Ruysenaers, envoy extraordinary and minister plenipotentiary of Her Majesty the Queen of the Netherlands, secretary-general of the Permanent Court of Arbitration, to act as secretary-general of the tribunal, and appointed the following gentlemen as secretaries of the tribunal:

Jonkheer W. Röell, first secretary of the International Bureau of the Permanent Court of Arbitration;

Mr. E. de Schelking, first secretary of the Russian legation at The Hague;

Mr. John W. Garrett, secretary of the legation of the United States of America at The Hague;

Earl Granville, second secretary of the British legation at The Hague, and

Baron de Berwick, attaché at the imperial ministry of justice at St. Petersburg.

The secretary-general read the list of the agents and counsel of the different powers, viz:

For Belgium:

Mr. Woeste, advocate at the supreme court at Brussels, minister of state, counsel.

Mr. Charles Cornez, advocate at the court of appeal at Brussels, secretary of the Belgian counsel.

For France:

Mr. Louis Renault, minister plenipotentiary, professor of law at

the University of Paris, counselor in the ministry of foreign affairs at Paris, agent.

Mr. Clunet, advocate at the court of appeal at Paris, member and ex-vice-president of the Institute of International law, counsel.

Mr. Fromageot, advocate at the court of appeal at Paris, secretary of the French delegation.

For Germany:

Mr. Bünz, consul-general of Germany at New York, delegate.

Doctor Zorn, "Geheimer Justizrath," professor of law at the University of Bonn, counsel.

Doctor Saelmans, attaché to the foreign office, secretary of the German delegation.

For Great Britain:

Mr. Arthur Larcom, of His Majesty's foreign office, agent.

Sir Robert B. Finlay, K. C., M. P., His Majesty's attorney-general, counsel.

Mr. Arthur Cohen, K. C., counsel.

Mr. H. Erle Richards, barrister at law, counsel.

Mr. J. D. Gregory, secretary of the British delegation.

For Italy:

Commendatore Augusto Pierantoni, senator of the Kingdom, professor of international law at the University of Rome, legal adviser.

Count A. de Bosdari, first secretary of the Italian legation at The Hague, agent.

For the Netherlands:

Mr. de Weckherlin, envoy extraordinary and minister plenipotentiary of Her Majesty the Queen of the Netherlands, agent.

Mr. C. Crommelin, attaché at the department of foreign affairs, secretary to the agent of the Government of the Netherlands.

For Spain:

Marquis de Villasinda, delegate.

For Sweden and Norway:

Mr. de Weckherlin, envoy extraordinary and minister plenipotentiary of Her Majesty the Queen of the Netherlands, agent.

For the United States of America:

Mr. Wayne MacVeagh, counsel.

Mr. Herbert W. Bowen, counsel.

Mr. W. L. Penfield, counsel.

Mr. Charles Ray Dean, secretary of the American delegation.

Mr. Walter Scott Penfield, secretary of the American delegation.

For the United States of Mexico:

Mr. Emilio Pardo, envoy extraordinary and minister plenipotentiary at The Hague, agent.

For Venezuela :

Mr. Wayne MacVeagh, counsel.

Mr. Herbert W. Bowen, counsel.

Mr. W. L. Penfield, counsel.

Mr. Charles Ray Dean, secretary of the Venezuelan delegation.

Mr. Walter Scott Penfield, secretary of the Venezuelan delegation.

The president then declared that, unless there were objection on the part of the representatives of the parties, the proceedings would be public, admittance to be by cards to be issued by the secretary-general.

The president then called on the delegates to give their opinion on the question of the language to be used before the tribunal.

During a discussion in which the various representatives of the powers took part, in answer to a remark made by Mr. Clunet on the subject of the reservation made by France and the acceptance of this reservation by General Velutini, envoy extraordinary and minister plenipotentiary of Venezuela at Paris, Mr. Wayne MacVeagh filed with the tribunal copies and translations of two telegrams of the 8th ultimo from President Castro, stating that General Velutini had no instructions to interfere in this question and that Venezuela accepts the language chosen by its delegates.

The president then said that the tribunal would give its decision on the question of the language at its next meeting, fixed for to-morrow.

The president then suggested that the delegates, in order to expedite the proceedings, should come to an agreement among themselves as to the questions of procedure which remained to be settled by the tribunal and as to precedence in debate.

Mr. Wayne MacVeagh, on personal grounds, asked that opportunity should be given him to proceed as soon as possible with the presentation of his case, to which no objection was made except by Mr. Cohen, who reserved, for the representatives of Great Britain, the right to respond to Mr. Wayne MacVeagh, if they disagreed with the facts presented by him.

The president said that an answer to this request would be given to-morrow, and the tribunal adjourned at 5 p. m. to meet to-morrow at 10.30 a. m.

THE HAGUE, *October 1, 1903.*

N. MOURAWIEFF,  
*The President.*

L. H. RUYSSENAERS,  
*The Secretary-General.*

RÖELL,  
SCHELKING,  
JOHN W. GARRETT,  
GRANVILLE,  
*The Secretaries.*

[French text.]

Le Tribunal s'est réuni à 3 heures de l'après-midi à l'Hotel de la Cour permanente d'Arbitrage.

Les Arbitres présents étaient :

Son Excellence Monsieur N. V. Mourawieff, Secrétaire d'Etat de S. M. I. l'Empereur de Russie, Conseiller Privé Actuel, Ministre de la Justice et Procureur Général de l'Empire de Russie ;

Monsieur le Professeur H. Lammasch, Docteur en droit, Membre de la Chambre des Seigneurs du Parlement autrichien, et

Son Excellence Monsieur de Martens, Conseiller Privé, Membre Permanent du Conseil du Ministère Impérial des Affaires Etrangères à St. Pétersbourg.

Monsieur de Mourawieff ayant été précédemment élu Président par ses Co-arbitres, déclare le Tribunal constitué et prononce le discours suivant :

“Appelé par la confiance de mes estimables Collègues à l'insigne honneur de présider le Tribunal d'Arbitrage dans l'affaire du règlement général des réclamations contre les Etats-Unis du Vénézuéla, je prends possession de cette charge, aussi lourde que flatteuse, avec un désir fervent et sincère de la remplir de mon mieux, et je déclare le Tribunal dûment constitué et ses audiences arbitrales ouvertes par la présente séance de début.

C'est en vertu des Compromis, conclus entre les Etats intéressés à Washington en mai de l'année courante, que se réunit ce Tribunal de trois Arbitres, chosis par Sa Majesté l'Empereur de Russie, sur la requête des Parties, parmi les Membres de la Cour permanente d'Arbitrage. A cause de circonstances inattendues et impossibles à prévoir, en raison du grand nombre des Puissances créancières et, par conséquent réclamantes, dont les Délégués à la Cour Internationale ne pouvaient pas, d'après l'arrangement, siéger comme juges dans ce litige, des difficultés ont surgi par rapport à la nomination des Arbitres et il s'est produit un retard considérable à la formation du Tribunal, qui devait se rassembler le 1 septembre. Une nouvelle entente diplomatique et une nouvelle décision Auguste furent nécessaires pour aboutir selon les stipulations du Protocole initial. Ce ajournement inévitable a pu contrarier des convenances personnelles, mais, puisqu'il vient de toucher à sa fin, ne nous en plaignons pas trop : les débats y gagneront peut-être en préparation à plus longue haleine, en ce caractère de concise ampleur et de stricte proportion, qui est le plus bel ornement de l'argumentation juridique.

Au nom du Tribunal je me fais un devoir agréable de témoigner tout d'abord notre gratitude à MM. les Membres du Conseil Administratif de la Cour permanente d'Arbitrage, qui ont bien voulu honorer de leur présence l'inauguration des travaux du second Tribunal,

émané de cette Cour. J'adresse ensuite un salut de cordiale bienvenue aux distingués Représentants des Parties devant le Tribunal, ainsi qu'aux Conseils, juristes éminents, qui les assisteront de leurs lumières dans les délibérations, ayant pour but d'éclairer nos consciences. Une collaboration assidue et mutuellement bienveillante facilitera, j'ose l'espérer, notre tâche si complexe et si importante, et, nous y apporterons tous, j'en suis persuadé, dans toute la mesure de nos aptitudes, un effort égal, un élan commun vers la vérité et la justice.

Il me paraît presque superflu de signaler en ce moment solennel à l'attention de l'illustre assistance la haute portée de cette nouvelle manifestation de l'action judiciaire mondiale, devenue permanente et régulière depuis que les nations du monde civilisé, en promulguant la Convention de La Haye, ont proclamé l'équité intermédiaire suprême, quoique idéale, de leurs différends, sinon de leurs destinées. Et vraiment, que pourrait-on donc ajouter à cette superbe évidence—uniquement que nous constatons avec une satisfaction profonde les sympathies chaque jour croissantes des peuples entiers et de l'élite des sociétés humaines pour la pensée généreuse de l'arbitrage international, organe fidèle et ferme rempart de la paix; que nous sommes heureux d'avoir été désignés à faire encore un pas en avant dans la marche progressive de ce principe fécond et vivace, à travers les épines et les ronces d'une voie fraîchement tracée, malgré les obstacles multiples disséminés sur son chemin. Toutefois, je me reprocherais de passer sous silence la signification particulièrement élevée de la réunion actuelle. Dans l'ordre chronologique elle est la deuxième tenue sous le régime de la Convention du 29 juillet 1899, mais c'est la première, due à l'assentiment et au concours de la pluralité des Puissances de la vieille Europe, d'habitude si lente à se départir des pratiques anciennes et des procédés invétérés. Et ce qui fait ressortir, ce qui rehausse singulièrement la gravité toute exceptionnelle de notre mission arbitrale, c'est que pour la première fois elle apparaît aujourd'hui dans sa conception la plus sublime, dans son application la plus salubre—d'arrêter, d'enrayer les sanglantes calamités de la guerre. Ne l'oublions jamais: le canon, déjà grondant sur les côtes d'un petit pays lointain, fut remplacé par la voix pacifique du jurisconsulte, la force a reculé, s'est inclinée—puisse-t-elle le faire toujours!—devant le droit."

Il invite ensuite Monsieur le Jonkheer L. H. Ruyssenaers, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté la Reine des Pays-Bas, Secrétaire-Général de la Cour permanente d'Arbitrage, à remplir les fonctions de Secrétaire-Général du Tribunal et nomme comme Secrétaires du Tribunal:

Monsieur le Jonkheer W. Röell, Premier Secrétaire du Bureau International de la Cour permanente d'Arbitrage;



Monsieur E. de Schelking, Premier Secrétaire de la Légation de Russie à La Haye;

Monsieur John W. Garrett, Secrétaire de la Légation des Etats-Unis d'Amérique à La Haye;

Monsieur le Comte Granville, deuxième Secrétaire de la Légation de Grande-Bretagne à La Haye, et

Monsieur le Baron de Berwick, Attaché au Ministère de la Justice de Russie.

Ensuite le Secrétaire-Général procède à la lecture de la liste des Délégués, Agents et Conseils des Puissances intéressées, savoir:

Pour l'Allemagne:

Monsieur Bünz, Consul-Général d'Allemagne à New York, Délégué.

Monsieur le Docteur Zorn, Conseiller intime de justice, Professeur de droit à l'Université de Bonn, Conseil.

Monsieur le Docteur Saelmans, Attaché au Département des Affaires Etrangères, Secrétaire de la Délégation allemande.

Pour la Belgique:

Monsieur Woeste, Avocat à la Cour de Cassation à Bruxelles, Ministre d'Etat, Avocat Conseil.

Monsieur Charles Cornez, Avocat à la Cour d'Appel à Bruxelles, Secrétaire de l'Avocat Conseil du Gouvernement Belge.

Pour l'Espagne:

Monsieur le Marquis de Villasinda, Délégué.

Pour les Etats-Unis d'Amérique:

Monsieur Wayne MacVeagh, Conseil.

Monsieur Herbert W. Bowen, Conseil.

Monsieur W. L. Penfield, Conseil.

Monsieur Charles Ray Dean, Secrétaire de la Délégation américaine.

Monsieur Walter Scott Penfield, Secrétaire de la Délégation américaine.

Pour les Etats-Unis Mexicains:

Monsieur Emilio Pardo, Envoyé Extraordinaire et Ministre Plénipotentiaire du Mexique près Sa Majesté la Reine des Pays-Bas, Agent.

Pour la France:

Monsieur Louis Renault, Ministre Plénipotentiaire, Professeur à la Faculté de Droit à Paris, Jurisconsulte du Département des Affaires Etrangères, Agent.

Monsieur Clunet, Avocat à la Cour d'Appel de Paris, Membre et ancien Vice-Président de l'Institut du Droit International, Avocat conseil.

Monsieur Fromageot, Avocat à la Cour d'Appel de Paris, Secrétaire de la Délégation française.

Pour la Grande-Bretagne :

Monsieur Arthur Larcom, du Département des Affaires Etrangères, Agent.

Sir Robert B. Finlay, K. C., Membre du Parlement, Attorney-General, Conseil.

Monsieur Arthur Cohen, K. C., Conseil.

Monsieur H. Erle Richards, Avocat Conseil.

Monsieur J. D. Gregory, Secrétaire de la Délégation britannique.

Pour l'Italie :

Monsieur le Commandeur Augusto Pierantoni, Sénateur du Royaume, Professeur de Droit international à l'Université de Rome, Conseiller légiste.

Monsieur le Comte A. de Bosdari, Premier Secrétaire de la Légation de Sa Majesté le Roi d'Italie à La Haye, Agent.

Pour les Pays-Bas :

Monsieur de Weckherlin, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté la Reine des Pays-Bas, Agent.

Monsieur C. Crommelin, Attaché au Département des Affaires Etrangères, Secrétaire de l'Agent du Gouvernement néerlandais.

Pour la Suède et la Norvège :

Monsieur de Weckherlin, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté la Reine des Pays-Bas, Agent.

Pour le Vénézuéla :

Monsieur Wayne MacVeagh, Conseil.

Monsieur Herbert W. Bowen, Conseil.

Monsieur W. L. Penfield, Conseil.

Monsieur Charles Ray Dean, Secrétaire de la Délégation Vénézuélienne.

Monsieur Walter Scott Penfield, Secrétaire de la Délégation Vénézuélienne.

Le Président déclare qu'avec l'assentiment des Partis les débats seront publics et ajoute que le public ne sera admis aux séances que sur la présentation de cartes spéciales délivrées par le Secrétaire-Général.

Le Président demande ensuite aux Délégués d'émettre leur opinion sur la question de la langue dont il sera fait usage devant le Tribunal.

Dans le cours de la discussion à ce sujet, à laquelle prirent part les divers Représentants des Puissances et en réponse à une observation de M. Clunet relative aux réserves faites par le Gouvernement français et leur acceptation par le Général Velutini, Envoyé Extraordinaire et Ministre Plénipotentiaire du Vénézuéla à Paris, M. Wayne MacVeagh dépose sur le Bureau du Tribunal copie et traduction de deux télégrammes du Président Castro en date du 8 septembre dernier, déclarant que le Général Velutini n'était pas autorisé



à intervenir dans cette question et que le Vénézuéla acceptait la langue choisie par ses Délégués.

Le Président déclare que le Tribunal rendra sa sentence sur la question de la langue à la prochaine séance, fixée au lendemain.

Le Président propose aux Délégués, en vue de faciliter la marche des débats, de s'entendre sur les questions de procédure à régler par le Tribunal ainsi que sur l'ordre des plaidoyers.

M. Wayne MacVeagh, pour des raisons de convenance personnelle, exprime le désir que l'occasion lui soit donnée dans le plus bref délai possible de prononcer son plaidoyer.

Sa demande ne soulève pas d'objection sauf de la part de M. Cohen, qui réserve pour les Représentants de la Grande-Bretagne le droit de répondre au Délégué du Vénézuéla, dans le cas où les dits Représentants ne seraient pas d'accord avec les faits énoncés par le Délégué.

Le Président déclare que la réponse à la demande de M. Wayne MacVeagh sera donnée demain, et il lève la séance à 5 heures, le Tribunal s'ajournant au lendemain à 10½ heures du matin.

LA HAYE, le 1<sup>er</sup> octobre, 1903.

N. MOURAWIEFF,  
*Le Président.*

L. H. RUYSSENAERS,  
*Le Secrétaire-Général.*

RÖELL,  
SCHELKING,  
JOHN W. GARRETT,  
GRANVILLE,  
*Les Secrétaires.*

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PROTOCOL II—MEETING OF FRIDAY, OCTOBER 2, 1903.

The tribunal assembled at 11 a. m.

The secretary-general read the following decision of the tribunal on the question of the language to be used:

Whereas Germany, Great Britain, Italy, and Venezuela, by the protocol of May 7, 1903, signed at Washington, declared (Article IV) that the English language should be used in the-proceedings;

And that none of the powers adhering to the protocol, except France, have made formal reservations concerning the above-mentioned stipulation;

And that the reservation made by France has met with no formal opposition on the part of the interested powers;

And whereas the decision of the tribunal on the languages to be used implies no preference for any one language, but is dictated only by considerations of convenience having to do with this special case alone;

And that it is impossible to expect the members of the tribunal and the representatives of the parties to use languages with which they are not familiar; and seeing that the French language is generally employed in all international meetings and transactions,

The tribunal decides:

(1) The protocols, the decisions, and the sentence of the tribunal of arbitration shall be drawn up in English and in French, both having the same authoritative and judicial value;

(2) The written and printed memoranda shall be drawn up in the English language and may be accompanied by a translation in the language of the power by which they are filed;

(3) The oral discussion before the tribunal shall take place in English or in French.

Mr. Bünz asked for an explanation of this decision.

Mr. Cohen drew attention to the decided opinion of his Government on this question that the English language alone should be used.

Mr. Wayne MacVeagh drew attention to the fact that both the United States of America and Venezuela protested from the beginning against the use of the French language.

Mr. Bünz stated that his Government had only heard of the French reservation on the 31st of August and only did not protest because they considered it obviously untenable.

Mr. Woeste considered that since the tribunal had rendered its decision there was no use in saying anything more.

Mr. de Martens said that it was not for the tribunal to decide upon the competence of General Velutini, whose name had arisen in the debate.

Mr. Weckherlin agreed with Mr. Woeste.

The tribunal retired for a short period, and on its return the secretary-general read the following explanation of its decision:

The tribunal, in answer to the request which has been made,  
Declares:

(1) In accordance with article 4 of the protocol of the 7th of May, 1903, that the English language is recognized as the official language of the proceedings, but in accordance with the exact meaning of the said article arguments may be presented in another language only with the permission of the tribunal.

(2) That the tribunal, by the decision just pronounced, has admitted, within the limits indicated by this decision, the French language as subsidiary, since it is familiar to the members of the tribunal and to the majority of the representatives of the parties.

Mr. Bünz made the following statement:

"I am personally of the opinion that the decision of the court contains not merely an interpretation of but a deviation from article 4 of the protocol signed by Germany and Venezuela on May 7, 1903.

“ If this opinion is correct, the court has, as I look at it personally, in its decision gone beyond the discretion granted to it by article 48 of the convention of July 29, 1899.

“ Under these circumstances I have to ask my Government for instructions as to their view of the point in question.

“ I will, however, not cause any delay in the deliberations by asking for an adjournment, but will continue to attend the meetings of the court without prejudice to the further action, if any, of my Government.”

The president asked the parties to give their views on the question of procedure.

Mr. Clunet, speaking in the name of Belgium, France, the Netherlands, Spain, and Sweden and Norway, whom he described as defendant parties, made the following proposal:

For—Belgium, France, the Netherlands, Spain, Sweden and Norway, defendants. Against—Germany, Great Britain, Italy, plaintiffs.

May it please the court,

Whereas Germany, Great Britain, and Italy claim a preferential treatment to the detriment of the other powers having claims against Venezuela;

Whereas Germany, Great Britain, and Italy claim, therefore, a real privilege contrary to the general law according to which the divers creditors of the same debtor have equal rights on his goods unless there exists a right of preference expressly recognized in law;

Whereas it is a general principle that every plaintiff has first to state the motives of his request and that the defendant answers afterwards:

By these motives, to decide that within the briefest possible time to be fixed by the tribunal—

(1) Germany, Great Britain, and Italy communicate to the other powers their statement of claims with the motives thereof.

(2) That within a reasonable time, to be fixed by the tribunal, the other powers reply to the aforesaid statement of claims.

October 2, 1903.

(Signed)

CH. WOESTE,  
MARQUIS DE VILLASINDA,  
L. RENAULT,  
WECKHERLIN (for the Netherlands  
and Sweden and Norway).

Mr. Cohen in emphasizing the importance of the rules of procedure to be settled upon in this case, being as it is the first case coming before the court which involves great questions of international law,

pointed out that the jurisdiction of this tribunal was solely derived from the protocol of May 7, 1903, from which he quoted.

At 12.30 the tribunal took a recess till 2.30.

On the reassembling of the tribunal the secretary-general presented a list<sup>a</sup> of all the documents filed in the International Bureau in connection with this case, and added that all these documents in this list are open for examination at any time by all parties concerned.

Mr. Cohen said that under the protocol of May 7, 1903, two contingencies may be contemplated: One if the tribunal should decide in favor of the blockading powers, in which event the case is finished, and the other if the tribunal should decide against the blockading powers, in which event it would then have to decide how the revenues in question should be distributed.

He then continued his speech, pointing out that according to universal precedent in cases of this kind the procedure must be: First, an exchange of cases, followed after a reasonable interval, by an exchange of counter cases, and then by written arguments, and maintaining very strongly that in this case no one party was plaintiff more than another, and that Mr. Clunet's proposals could not be adopted without prejudging the case.

Mr. Richards, after strongly supporting Mr. Cohen's arguments, read the following proposal of Great Britain, Germany, and Italy:

(1) Cases to be exchanged at the bureau by all powers appearing in the arbitration on a date to be fixed by the tribunal.

Blockading powers are ready to exchange at once. Venezuela and the United States are also ready.

The other powers within a definite time either to present separate cases or to signify acceptance of the United States case or case of any other power, with such modifications as they desire.

(2) Counter cases to be similarly exchanged within a time to be fixed by agreement or, failing agreement, by the tribunal.

(3) After exchange of counter cases no further facts to be put in evidence except by leave of tribunal.

(4) Tribunal to meet for oral discussion on a day not earlier than three weeks after exchange of counter cases. Any party to be at liberty to hand in written arguments during that period.

Mr. Pierantoni spoke strongly in the same sense and associated himself with the views of Great Britain and Germany.

Mr. Woeste insisted that the blockading powers must prove that they have a right to preference and that they are the plaintiffs.

The president considered that the question had been sufficiently discussed and proposed that Mr. MacVeagh should now be heard.

To this Mr. Cohen objected until the question of procedure should have been decided, and Mr. Wayne MacVeagh consented.

Mr. Bünz supported the contentions of the British and Italian representatives, adding, however, that his Government considered that

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<sup>a</sup> See Annex I.

the blockading powers were undoubtedly defendants in this case as being in possession of the securities.

After some remarks made by Mr. Bowen and Mr. Penfield, urging a quick settlement of the case on personal grounds, which were disputed by Messrs. Cohen, Clunet, and Bünz, the president said that all their statements would be taken into consideration by the tribunal, which would give its decision to-morrow morning.

Mr. Woeste maintained, as before, that the blockading powers are the claimants, as they claim preferential treatment.

Doctor Zorn made a few remarks, combating the conclusions of Mr. Woeste.

At 5 p. m. the president declared the tribunal adjourned to 11 a. m. to-morrow, when after the reading of its decision on the question of procedure, Mr. Wayne MacVeagh would speak.

The Hague, October 2, 1903.

N. MOURAWIEFF,  
*The President.*  
L. H. RUYSSENAERS,  
*The Secretary-General.*  
RÖELL,  
SCHELKING,  
JOHN W. GARRETT,  
GRANVILLE,  
*The Secretaries.*

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[French text.]

Le Tribunal se réunit à 11 heures du matin.

Le Secrétaire-Général donne lecture de la décision suivante du Tribunal sur la question de la langue à employer.

Le Tribunal Arbitral, considérant: que l'Allemagne, la Grande Bretagne, l'Italie et le Vénézuëla, par le Protocole du 7 mai 1903 signé à Washington, ont déclaré (art. IV) la langue anglaise comme la langue adoptée pour la Procédure (Proceedings);

qu'aucune des Puissances adhérentes au susdit Protocole, excepté la France, n'a fait de réserves formelles concernant la stipulation susmentionnée;

que les réserves faites par la France n'ont soulevé aucune opposition formelle de la part des Puissances intéressées;

considérant que la décision du Tribunal sur les langues à employer n'implique aucune préférence à donner à une langue quelconque, mais qu'elle est inspirée seulement par des considérations de convenance ayant trait uniquement à ce cas spécial;

qu'il est impossible d'exiger des Membres du Tribunal et des Représentants des Parties l'emploi de langues qui ne leur sont pas

familiales; et d'autre part que la langue française est pratiquée généralement dans toutes les réunions et transactions internationales;

Décide:

(1) Les procès-verbaux, les décisions et la sentence du Tribunal d'Arbitrage seront rédigés en anglais et en français. Les deux rédactions auront la même valeur authentique et juridique;

(2) Les mémoires écrits ou imprimés seront présentés en langue anglaise et pourront être accompagnés d'une traduction dans la langue du pays, par lequel ils seront produits;

(3) Les débats devant le Tribunal pourront avoir lieu en anglais ou en français.

M. Bünz, demande des éclaircissements sur ce point.

M. Cohen appelle l'attention sur l'opinion bien arrêtée de son Gouvernement sur la question soulevée, opinion n'admettant que l'usage de la langue anglaise.

M. Wayne MacVeagh rappelle que les Etats-Unis et le Vénézuéla ont protesté dès l'origine contre l'adoption de la langue française.

M. Bünz déclare que le Gouvernement allemand n'a eu connaissance de la réserve française que le 31 août et qu'il n'a pas protesté estimant que cette réserve n'était pas admissible.

M. Woeste remarque que le Tribunal, ayant fait connaître sa décision, toute discussion devenait par là même inutile.

M. de Martens observe qu'il n'est pas de la compétence du Tribunal de s'occuper des pouvoirs du Général Velutini, dont le nom a été mêlé aux débats.

M. de Weckherlin s'associe aux paroles de M. Woeste.

Le Tribunal se retire pour délibérer, et à sa rentrée en séance le Secrétaire-Général donne lecture de la décision interprétative suivante:

Le Tribunal, édférant à la demande d'éclaircissements qui lui a été adressée,

déclare:

(1) Qu'en vertu de l'article IV du Protocole du 7 mai 1903 la langue anglaise est reconnue comme la langue officielle de la procédure, mais que, d'après le sens précis du même article, les arguments ne peuvent être présentés dans une autre langue qu'avec l'autorisation du Tribunal;

(2) Que le Tribunal, par la décision qui vient d'être prononcée, a admis dans les limites indiquées par cette décision la langue française subsidiairement comme étant familière aux Membres du Tribunal et à la plupart des Représentants des Parties.

M. Bünz fait la déclaration qui suit:

"Je suis personnellement de l'avis que la décision du Tribunal contient non seulement une interprétation, mais une dérogation à l'article IV du Protocole signé par l'Allemagne et le Vénézuéla le 7 mai 1903. Si cette opinion est juste, le Tribunal, par sa décision, a dépassé selon mon avis personnel les droits qu'il lui sont reconnus par



l'art. 48 de la Convention du 29 juillet 1899. Dans ces circonstances, je suis obligé de demander des instructions à mon Gouvernement quant à sa manière de voir sur cette question. Toutefois, je ne désire causer aucun retard dans les délibérations en demandant un ajournement, et je continuerai à assister aux séances sans préjudice de toute action éventuelle de mon Gouvernement."

Le Président demande aux Parties de se prononcer sur la question de procédure.

M. Clunet parlant au nom de la Belgique, de l'Espagne, de la France, des Pays-Bas et de la Suède et Norvège, en qualité de Parties défenderesses, dépose les conclusions suivantes :

Pour—la Belgique, l'Espagne, la France, les Pays-Bas, la Suède et la Norvège, parties défenderesses Contre—l'Allemagne, la Grande-Bretagne, l'Italie, parties demanderesses.

Plaise au Tribunal Arbitral,

Attendu que l'Allemagne, la Grande-Bretagne et l'Italie réclament un traitement préférentiel au détriment des autres Puissances qui ont des créances à faire valoir contre le Vénézuëla ;

Attendu qu'elles demandent ainsi un véritable privilège contraire au droit commun, d'après lequel les divers créanciers d'un même débiteur ont des droits égaux sur les biens de celui-ci, à moins d'un droit de préférence expressément reconnu par le droit ;

Attendu que, c'est un principe général, que toute partie demanderesse doit d'abord faire connaître les motifs de sa demande et que la partie défenderesse répond ensuite ;

Par ces motifs,

Décider que, dans le plus bref délai possible à fixer par le Tribunal,  
1°. L'Allemagne, la Grande-Bretagne et l'Italie communiqueront aux autres Puissances leurs conclusions motivées à l'appui de leur prétention ;

2°. que dans un délai raisonnable à fixer par le Tribunal les autres Puissances répondront aux précédentes conclusions.

Le 2 octobre 1903.

(Signé:)

CH. WOESTE.

MARQUIS DE VILLASINDA.

L. RENAULT.

WECKHERLIN (*pour les Pays-Bas et la Suède et la Norvège.*)

M. Cohen, souligne l'importance des règles de procédure à fixer dans cette affaire, qui, en effet, est la première à saisir ce Tribunal de graves questions de droit international et fait ressortir que la juridiction du Tribunal repose uniquement sur le Protocole du 7 mai 1903.

Le Tribunal suspend la séance à 12½ heures jusqu'à 2½ heures.

A la reprise de la séance, le Secrétaire-Général présente une liste

de tous les documents déposés au Bureau International de la Cour,\* se rapportant au litige en question et ajoute que tous ces documents pourront être examinés en tout temps par les Parties intéressées.

M. Cohen fait ressortir que le Protocole du 7 mai 1903 admet deux éventualités: la première, que le Tribunal se prononcerait en faveur des Puissances bloquantes, et dans ce cas là le litige pourrait être considéré comme terminé; — la seconde supposerait une décision contraire et alors le Tribunal aurait à statuer sur la répartition des revenus en question.

Continuant son discours; il fait ressortir que, dans tous les précédents analogues, la procédure a consisté dans un échange de Mémoires suivi dans un temps convenable d'un échange de Contre-Mémoires et ensuite d'argumentations écrites. Il soutient énergiquement que, dans le cas présent, il n'y a pas de Partie demanderesse, ni de Partie défenderesse et que la proposition de M. Clunet ne pourrait être acceptée sans préjuger la question.

M. Richards en soulignant la thèse de M. Cohen, donne lecture des conclusions suivantes de la Grande-Bretagne, de l'Allemagne et de l'Italie.

(1) Toutes les Puissances intéressées à l'Arbitrage devront échanger leurs Mémoires au Bureau à une date à fixer par le Tribunal.

Les Puissance bloquantes sont prêtes à faire cet échange de suite.

Le Vénézuëla et les Etats-Unis sont également prêts.

Les autres Puissances devront, dans un délai déterminé, soit présenter leurs propres Mémoires, soit notifier leur adhésion au Mémoire des Etats-Unis d'Amérique ou à celui d'une autre Puissance avec les modifications qu'elles jugeraient nécessaires.

(2) Les Contre-Mémoires doivent être échangés de même dans un délai qui sera fixé par un arrangement ou, faute d'un arrangement, par le Tribunal.

(3) Après l'échange des Contre-Mémoires, aucun fait nouveau ne pourra être produit qu'avec l'assentiment du Tribunal.

(4) Le Tribunal se réunira pour les débats à une date qui devra être fixée à 3 semaines au moins après l'échange des Contre-Mémoires. Chaque Partie aura la faculté de présenter pendant ce délai des arguments écrits.

M. Pierantoni se prononce dans le même sens et s'associe à la manière de voir des Représentants anglais et allemands.

M. Woeste exprime l'opinion que les Puissances bloquantes doivent apporter des preuves de leurs droits à un traitement préférentiel, attendu qu'elles sont les Parties réclamantes.

Le Président émet l'avis que la question est suffisamment débattue et propose de donner la parole à M. Wayne MacVeagh.

M. Cohen est d'un avis contraire parce que la question de procédure doit d'abord être définitivement réglée.

M. Wayne MacVeagh est de la même opinion.

M. Büinz appuie les arguments des Représentants anglais et italiens, en y ajoutant toutefois, que sont Gouvernement considère les Puis-



sances bloquantes comme étant indubitablement Parties défenderesses puisqu'elles sont en possession du gage.

Après quelques observations de M. Bowen et de M. Penfield relatives à leur désir, pour des motifs personnels, de voir activer les débats et après opposition de MM. Clunet, Cohen et Bünz, le Président déclare que ces observations seront prises en considération par le Tribunal dans sa décision du lendemain.

M. Woeste maintient sa manière de voir, selon laquelle les Puissances bloquantes sont des Parties réclamentes, puisqu'elles réclament un traitement préférentiel.

M. Zorn faite quelques remarques au sujet des paroles de M. Woeste.

Le Président lève la séance à 5 heures jusqu'au lendemain à 11 heures du matin.

La parole sera donnée à M. Wayne MacVeagh après lecture des décisions du Tribunal au sujet de la question de la procédure.

La Haye, le 2 octobre 1903.

N. MOURAWIEFF,  
*Le Président.*

L. H. RUYSSENAERS,  
*Le Secrétaire-Général.*

RÖELL,  
SCHELKING,  
JOHN W. GARRETT,  
GRANVILLE,  
*Les Secrétaires.*

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PROTOCOL III—MEETING OF SATURDAY, OCTOBER 3, 1903.

The tribunal met at 11 a. m.

The president spoke as follows:

I have an important communication to make, which I beg those present to listen to standing.

The tribunal, when it first met, announced the opening of its sessions by telegraph to His Imperial Majesty the Emperor of Russia and to Her Majesty the Queen of the Netherlands and presented to those august sovereigns its most respectful sentiments and best wishes.

In reply the International Tribunal of Arbitration has just been honored by the following telegrams:

RABENSTEINFELD.

I sincerely thank the members of the arbitration tribunal assembled at The Hague for the good wishes they have expressed to me, and have complete confidence in the justice of the decision which they will consider it their duty to render.

(Signed)

WILHELMINA.

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MUERZSTEG.

Our August Master highly appreciating the sentiments expressed to him by the International Tribunal in the telegram announcing the opening of the ses-

sions of the International Tribunal of Arbitration for the Venezuelan affair, desires me to express to your excellency and to Messrs. Lammasch, Martens, and Ruysenaers the sincere thanks and best wishes of His Imperial Majesty.

(Signed)

LAMSDORFF.

The president then expressed the regret of the tribunal that the parties were not ready to present their cases at the first meeting of the tribunal.

The secretary-general read the following decision of the tribunal as to the question of procedure:

In accordance with Articles II and IV of the protocol of May 7, 1903, and articles 39, 40, 42, 43, and 49 of the convention of July 29, 1899,

The tribunal has decided:

(1) The parties shall present to the tribunal, and exchange with each other, in a sufficient number of copies, the printed or written acts and the documents containing the arguments of their case, not later than the 18th of October.

(2) The written or printed replies to these acts and documents can be produced by the parties under the same conditions, up to the 2d of November, inclusive.

(3) After the expiration of these periods, but before the closure of the oral discussion, the parties can present no acts or documents except with the special permission of the tribunal and with the condition that they shall communicate them to all the other parties.

(4) The next meeting of the tribunal for the oral discussion will take place on the 4th of November next.

Mr. Cohen demanded to be informed of the contents of three sealed envelopes addressed to the members of the tribunal by the Venezuelan counsel, mentioned under No. 35 in the list of documents filed at the bureau.

Mr. Wayne MacVeagh explained that these envelopes contained the Venezuelan brief and that he was quite ready to present copies of the same to all parties, which was at once done by Mr. Bowen.

Mr. Cohen maintained that it was quite impossible to prepare the counter cases in so short a time and begged the tribunal to extend the time allowed.

Mr. Bünz entirely adhered, in the name of his Government, to this request.

Mr. Penfield requested the tribunal to be allowed to print and distribute his speech in case he should be obliged, by instruction of his Government, to leave for America before the oral discussion.

The president, having assured himself of the assent of all parties, said that the tribunal had no objection to the course proposed by Mr. Penfield.

He explained that the members of the tribunal had not yet had the time to examine the contents of these three sealed envelopes, but that, by article 40 of The Hague Convention, every document submitted by one party must be communicated to all the parties.

He further declared that the tribunal had taken into due considera-

tion all the arguments adduced yesterday, but that the decision of the tribunal as to the procedure must now be considered definitely decided.

Mr. Wayne MacVeagh then opened his speech at 11.20.

The sitting was interrupted at 12.30 and resumed at 2.45 p. m., when Mr. Wayne MacVeagh continued his speech.

Upon an observation made by the speaker on the subject of the great disappointment felt by Venezuela at not having had a representative on the arbitral tribunal of 1899 for the settlement of the Anglo-Venezuelan dispute as to the frontier between British Guiana and Venezuela, Mr. de Martens declared that he could not let this assertion pass, as it seemed to imply a certain criticism of the composition of the tribunal over which he himself had the honor to preside. In his opinion Venezuela was represented in that case by two American arbiters of the highest competence and of exceptional reputation, and he desired to affirm now that Venezuela could not have had better counsel or more impartial judges than those who gave the decision in the case in question.

Mr. Wayne MacVeagh hastened to declare that he had not intended to throw the smallest blame on anyone, and that he shared the opinion expressed by His Excellency Mr. de Martens.

Mr. Wayne MacVeagh interrupted his speech for a few minutes.

Mr. Bowen asked whether France adhered purely and simply to the protocols of May 7.

Mr. Renault, in answer to Mr. Bowen's question, said that "in view of the decision of the tribunal on the language question I declare that the Government of the French Republic is willing to submit itself completely to it and that therefore France may now be considered as adhering purely and simply to the protocols of May 7."

The president said that the tribunal had settled the question of languages, and he reminded counsel of article 46 of the convention of 1899, which forbids any discussion in such a case.

Mr. Wayne MacVeagh then resumed his speech, and was still speaking when the tribunal adjourned at 5 p. m. to meet Monday, October 5, at 10.30 a. m.

The Hague, October 3, 1903.

N. MOURAWIEFF,  
*The President.*

L. H. RUYSSENAERS,  
*The Secretary-General.*

RÖELL,  
SCHELKING,  
JOHN W. GARRETT,  
GRANVILLE,  
*The Secretaries.*

[French text.]

Le Tribunal s'est réuni à 11 heures du matin.

Le Président en ouvrant la séance prononce les paroles suivantes :

J'ai à faire une communication importante, que je prie l'assistance de bien vouloir entendre debout.

Le Tribunal, dès sa première réunion, a annoncé l'ouverture de sa session par télégraphe à Sa Majesté Impériale l'Empereur de Russie et à Sa Majesté la Reine des Pays-Bas, tout en mettant aux pieds des Augustes Souverains ses sentiments les plus respectueux et ses vœux les meilleurs.

En réponse, le Tribunal International d'Arbitrage vient d'être honoré par les télégrammes suivants :

RABENSTEINFELD.

Je remercie sincèrement les Membres du Tribunal d'Arbitrage réunis à La Haye pour les vœux qu'ils m'ont exprimés et j'ai entière confiance en la justice de la décision qu'ils croiront devoir prendre.

(Signé.)

WILHELMINA.

MUERZSTEG.

Notre Auguste Maître, très sensible aux sentiments que le Tribunal International a exprimés dans le télégramme annonçant ouverture des séances du Tribunal International d'Arbitrage pour affaire de Vénézuëla, me charge de faire parvenir l'expression des sincères remerciements et des meilleurs souhaits de Sa Majesté Impériale à Votre Excellence ainsi qu'à Messieurs Lammasch, Martens, et Ruyssenaers.

(Signé)

LAMSDORFF.

Le Président exprime ensuite les regrets du Tribunal de constater que les Parties n'étaient pas en mesure de présenter leurs Mémoires dès la première réunion du Tribunal.

Ensuite le Secrétaire-Général donne lecture de la décision du Tribunal au sujet de la question de procédure à suivre dont voici le texte.

En vertu des Articles II et IV du Protocole du 7 mai 1903 et des articles 39, 40, 42, 43, et 49 de la Convention du 29 juillet 1899,

Le Tribunal décide :

(1) Les Parties présenteront au Tribunal et se communiqueront mutuellement, en nombre suffisant d'exemplaires, les actes imprimés ou écrits et les documents contenant les moyens invoqués dans la cause, pas plus tard que le 18 octobre.

(2) Les répliques imprimées ou écrites à ces actes et documents pourront être produites par les Parties dans les mêmes conditions jusqu'au 2 novembre inclusivement.

(3) Après l'expiration de ces délais, mais avant la clôture des débats, les Parties ne pourront présenter des actes ou documents que sur une autorisation spéciale du Tribunal et à charge d'en donner connaissance à toutes les autres Parties.

(4) La prochaine séance du Tribunal pour la discussion orale aura lieu le 4 novembre prochain.

M. Cohen demande des éclaircissements au sujet du contenu des trois enveloppes scellées qui ont été adressées par les Conseils du Vénézuëla aux membres du tribunal et qui sont mentionnées sous le n°. 35 dans la liste des documents déposés au Bureau.

M. Wayne MacVeagh déclare que ces enveloppes contiennent le mémoire du Vénézuëla et qu'il est disposé à en remettre tout de suite un exemplaire à chacune des parties, ce qui est fait séance tenante par M. Bowen.

M. Cohen en faisant ressortir qu'il est impossible de présenter les contre-mémoires dans un si bref délai, demande au tribunal de bien vouloir prolonger les délais.

M. Bünz s'associe entièrement, au nom de son Gouvernement, à cette demande.

M. Penfield demande au tribunal de l'autoriser à faire imprimer et distribuer son discours dans le cas où il serait obligé—d'ordre de son Gouvernement—de partir pour l'Amérique avant les débats.

Le président, après s'être assuré de l'assentiment de toutes les parties, répond que le tribunal n'a pas d'objection à opposer à la demande de M. Penfield.

Le président déclare ensuite que les membres du tribunal n'ont pas encore eu le temps d'examiner le contenu des trois enveloppes scellées, mais que, d'après l'article 40 de la Convention de La Haye, toute pièce produite par l'une des parties doit être communiquée aux autres parties.

En outre, il déclare que tous les arguments présentés hier ont été pris en sérieuse considération, mais que la décision du tribunal au sujet de la question de la procédure à suivre est maintenant définitive.

Le président donne la parole à M. Wayne MacVeagh, qui commence son discours à 11 heures 20.

La séance est suspendue à 12.30 et reprise à 2½ heures.

A la reprise de la séance M. Wayne MacVeagh continue son discours.

A la suite d'une observation faite par l'orateur au sujet de la grande déception du Vénézuëla de n'avoir pas eu de représentant dans le Tribunal d'Arbitrage de 1899 pour le règlement du litige anglo-vénézuélien relatif aux frontières entre la Guyane Britannique et le Vénézuëla, M. de Martens déclare qu'il ne saurait laisser passer cette assertion qui semble contenir une certaine critique de la composition de ce tribunal qu'il a eu personnellement l'honneur de présider. D'après lui, le Vénézuëla a été représenté dans cette affaire par deux arbitres américains de la plus haute compétence et d'une réputation hors ligne et il désire affirmer ici que le Vénézuëla n'aurait pu avoir de meilleurs

avocats ni des juges plus impartiaux que ceux qui ont rendu la sentence dans l'affaire en question.

M. Wayne MacVeagh s'empresse de déclarer qu'il n'a pas eul'intention de jeter le moindre blâme sur qui que ce soit et qu'il partage l'opinion exprimée par Son Excellence M. de Martens.

M. Wayne MacVeagh interrompt son discours pendant quelques instants.

M. Bowen demande si la France adhère purement et simplement aux Protocoles du 7 mai.

M. Renault, en réponse à la demande faite par M. Bowen, dit " En présence de la décision du Tribunal sur la question des langues, je déclare que le Gouvernement de la République française entend s'y soumettre complètement et qu'ainsi la France peut être maintenant considérée comme adhérant purement et simplement aux Protocoles du 7 mai."

Le Président dit que le Tribunal à tranché la question des langues et il rappelle l'article 46 de la Convention de La Haye qui défend toute discussion en pareil cas.

M. Wayne MacVeagh reprend son argumentation et continue son discours jusqu'à 5 heures.

La séance est levée et le Tribunal s'ajourne à lundi 5 octobre à 10½ heures du matin.

La Haye, le 3 octobre 1903.

N. MOURAWIEFF,  
*Le Président.*  
L. H. RUYSSENAERS,  
*Le Secrétaire-Général.*  
RÖELL,  
SCHELKING,  
JOHN W. GARRETT,  
GRANVILLE,  
*Les Secrétaires.*

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#### PROTOCOL IV.—MEETING OF MONDAY, OCTOBER 5, 1903.

The tribunal met at 11 a. m.

Mr. Cohen requested the tribunal to enact the following rule, which had been laid down in many former arbitrations:

"If in the cases or countercases submitted to the arbitrators any party shall have specified or alluded to any report or document in its own exclusive possession without annexing a copy, such party shall be bound, if any other party thinks proper to apply for it, to furnish that party with a copy thereof, and any party may call upon any other party through the bureau to produce the originals or certified copies of any papers adduced as evidence, and such originals or cer-

tified copies shall be thereupon produced as soon as is reasonably possible."

Mr. Bünz said:

"In the name of my Government, I wish to ask the following question:

"Is it sufficient that documents which we have received in this business from an interested power in the language of that power, e. g. dispatches which the Venezuelan Government have addressed to us in the Spanish language and which are to be submitted to the tribunal as evidence, should be laid in original, or must they be accompanied by an English translation?"

Mr. Bowen, referring to this request, asked that all documents should be accompanied by an English translation.

Mr. de Weckherlin expressed his readiness to accept the decision of the tribunal.

The president said that the tribunal had no objection to Mr. Cohen's request, provided that the production of such documents should cause no delay in the oral discussion.

In answer to Mr. Bünz the president said that according to the decision of the tribunal on the language question every document must be accompanied by an English translation.

Mr. Wayne MacVeagh then resumed his speech and continued it till 4 p. m., with an interruption from 12.30 to 2.

The president said that the tribunal had resolved to settle at once the order of the oral discussion and called upon the secretary-general, who read the following decision:

In accordance with Articles II and IV of the protocol of May 7, 1903, and articles 39, 45, and 49 of the convention of July 29, 1899, the tribunal, considering it necessary to lay down at once the order of the oral discussion which will be held before it after the expiration of the time allowed for the presentation of written documents,

Decides:

(1) The delegates of the parties (agents and counsel) shall plead in the alphabetical order of the countries which they represent;

(2) All the delegates of the parties may take part in the first pleadings;

(3) As to the replies, there shall be but one from each party; this reply may be made by one of the representatives of each party, respectively, chosen by that party.

Mr. Clunet inquired whether it was intended that the alphabetical order should be in English or in French.

The secretary-general answered that he was authorized by the tribunal to declare that the alphabetical order was to be in English.

Mr. Cohen asked whether, as Venezuela had opened the case, Great Britain had not the right to the last word.



The president said that there was no first or last, but that every party had equal rights.

Mr. Bowen asked in what manner the cases were to be exchanged.

The president said that they must be exchanged through the intermediary of the International Bureau.

The meeting then adjourned at 4.10 p. m. to meet on Wednesday, November 4, 1903, at 10.30 a. m.

The Hague, October 5, 1903.

N. MOURAWIEFF,  
*The President.*

L. H. RUYSSENAERS,  
*The Secretary-General.*

RÖELL,  
SCHELKING,  
JOHN W. GARRETT,  
GRANVILLE,  
*The Secretaries.*

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[French text.]

Le tribunal se réunit à 11 heures du matin.

M. Cohen prie le tribunal de poser la règle qui a été admise dans plusieurs arbitrages antérieurs, à savoir :

“ Si, dans les mémoires ou contre-mémoires, l'une des parties invoque ou mentionne un rapport ou document, dont elle aurait seule la possession, sans en fournir une copie, elle sera tenue, si une autre partie juge à propos de demander cette copie, de la lui donner, et chaque partie pourra réclamer de toute autre partie, par l'intermédiaire du Bureau, la production des originaux ou de copies certifiées conformes de tous documents apportés comme preuves et lesdits originaux ou copies certifiées conformes seront alors produits le plus tôt possible.”

M. Bünz dit :

“ Au nom de mon Gouvernement, je désire poser la question suivante : Est-il suffisant de présenter en original au tribunal les documents transmis par une puissance intéressée et rédigés dans la langue de cette dernière, par exemple : les dépêches qui nous ont été adressées par le Gouvernement du Vénézuëla en langue espagnole et qui doivent être soumises au tribunal comme preuves ou bien ces documents doivent-ils être accompagnés d'une traduction anglaise ? ”

M. Bowen, sur cette question, demande que tous les documents soient accompagnés d'une traduction anglaise.

M. de Weckherlin se déclare prêt à accepter la décision du tribunal.

Le président dit que le tribunal n'a pas d'objection à opposer à



la demande de M. Cohen, pourvu que la production des dits documents n'apporte pas de retard à la discussion orale.

En réponse à M. Bünz, le président fait observer que, d'après la décision du tribunal sur la question de la langue à employer, tout document doit être accompagné d'une traduction anglaise.

M. Wayne MacVeagh reprend la suite de son discours et le continue jusqu'à 4 heures de l'après-midi avec une interruption de 12.30 à 2 heures.

Le président dit que le tribunal a résolu de régler dès à présent l'ordre de la discussion orale et il donne la parole au secrétaire-général qui lit à cet égard la décision suivante :

Conformément aux articles II et IV du protocole du 7 mai 1903 et des articles 39, 45 et 49 de la convention du 29 juillet 1899, le tribunal, trouvant nécessaire de régler dès maintenant l'ordre de la discussion orale, qui aura lieu devant lui après la clôture de l'instruction écrite,

Décide :

(1) Les délégués des parties (agents et conseils) plaideront dans l'ordre alphabétique des pays qu'ils représentent ;

(2) Tous les délégués des parties pourront participer aux premiers plaidoyers ;

(3) Quant aux répliques, il n'y en aura qu'une de chaque partie ; cette réplique pourra être prononcée par un des représentants de la partie respective, à désigner par elle.

M. Clunet demande s'il a été entendu que l'ordre alphabétique sera suivi en anglais ou en français.

Le Secrétaire-Général répond qu'il est autorisé par le tribunal à déclarer que l'ordre alphabétique sera suivi en Anglais.

M. Cohen demande si, comme le Vénézuëla a plaidé le premier, la Grande-Bretagne n'a pas le droit d'avoir le dernier mot.

Le Président dit qu'il n'y a pas ni premier ni dernier, mais que chaque Partie a des droits égaux.

M. Bowen demande la manière dont les Mémoires devront être échangés.

Le Président répond qu'ils doivent être échangés par l'intermédiaire du Bureau International.

A 4 heures 10 le Tribunal s'ajourne au mercredi 4 novembre 1903 à dix heures et demi.

La Haye, le 5 octobre 1903.

N. MOURAWIEFF,  
*Le Président.*

L. H. RUYSSENAERS,  
*Le Secrétaire-Général.*

RÖELL,  
SCHELKING,  
JOHN W. GARRETT,  
GRANVILLE,  
*Les Secrétaires.*

## PROTOCOL V.—MEETING OF WEDNESDAY, NOVEMBER 4, 1903.

The tribunal met at 10.45 a. m.

The president, in declaring the sitting open, spoke as follows:

“The arbitral tribunal resumes its sittings, the written documents having all been handed in within the time set by the decision of October 3 last.

“During this phase of the arbitral procedure an animated exchange took place of cases and countercases presented by the respective parties, to the total number of 20. The arbitrators have already had time to apply themselves to the study of these very interesting documents as they were from time to time deposited at the International Bureau. They contain the detailed development of the arguments invoked in this arbitration and set forth its different aspects with complete clearness. Further, before beginning the oral debates, being anxious to economize the time which is precious to all, I think it well to express the hope that the gentlemen who are to speak, having confidence in the sustained attention of the tribunal, will be good enough to concentrate their efforts and the force of their eloquence solely on the chief points of the case and carefully limit the development of their arguments to those points which most nearly concern it. Such conduct, while perfectly conformable with the intrinsic importance, so to speak, of our mission, would permit the avoidance not only of arguments not directly touching its purely judicial object, but also of repetitions which are always more or less useless and idle. There is no need to add that we are convinced in advance that perfect courtesy will be the dominant note of the speeches to which we are about to listen.

We shall be grateful to you, gentlemen, for such conduct, and the clearness so desirable in the cause which we have to judge will assuredly profit thereby.

Finally, I think it my duty to draw the attention of the delegates to the necessity of considering in their pleadings all the conditions stipulated generally in the protocol of May 7, 1903, and particularly in Article I, so that the tribunal may be able to fulfill its task completely.

With the same constant desire not to lose any time unnecessarily, the tribunal has decided to sit every working day from 10.30 a. m. to 5 or 5.30 p. m., with an interval for luncheon.

There is now one incident to be settled before we can finally pass on to the debates. The British agent has once more raised, in a special memorandum, a question as to the order of the pleadings, asking that the delegates of Venezuela and the United States of America should be given, for their speeches and replies, not their place in alphabetical order, but the first place, since that first place was granted as

a personal exception in favor of one of those delegates, Mr. Wayne MacVeagh. This question, which is of rather secondary importance, but which has produced an exchange of views in writing among some of the delegates, does not appear to us to necessitate a renewal of the preliminary discussion, since it entirely depends on the decision which we have already given on the 5th of October as to the order of the oral procedure. Having consequently examined the claims newly formulated, the tribunal, in virtue of article 46 of The Hague Convention, has given the decision as to these claims, which will now be read by the secretary-general.

The secretary-general read as follows:

"The tribunal, in view of its definite decision of October 5, as to the order of the oral debate, and in default of any new facts or agreements between the parties which might serve as sufficient reason for any modification of this decision, declares that it maintains the order of the pleadings as laid down at the meeting of October 5 in its integrity."

Mr. Ruysenaers then stated that he had received yesterday evening from Mr. Bowen the Venezuelan counter case and the Venezuelan reply to the British memorandum concerning the order of procedure, and read a letter from the Venezuelan counsel of November 3, 1903, explaining that this counter case was ready and printed last week, and that a copy had been handed by him to the president of the tribunal in Paris on November 1, but that by mistake he had thought the date of exchange was the 4th instead of the 2d of November.

The president corroborated the fact that Mr. Bowen had handed to him a printed copy of the Venezuelan counter case on November 1, and he asked the parties if they consented to these two documents being duly received by the secretary-general of the tribunal.

Sir Robert Finlay said that under the circumstances he would raise no objection on behalf of his Government; but, as they had had no opportunity to read this counter case, he reserved the right to such delay as might be necessary in order to respond to it.

Mr. Bowen thanked the tribunal and the representatives of the parties.

Mr. Pierantoni deposited with the tribunal a copy of Volume XII, second series, of the *Nouveau Recueil Général de Traités* by G. Fr. de Martens (1887), and also a note of April 14, 1894, giving a *Projet d'une action collective contre le Vénézuéla, rédigé par les Représentants d'Allemagne, Belgique, Espagne et France à Caracas*.

The secretary-general read a note from the Spanish delegate of November 4, 1903, announcing the appointment of Mr. Clunet, French counsel, to assist him at the meetings as counsel.

Mr. de Weckherlin deposited the following declaration:

“In view of the fact that a party to these arbitration proceedings requests the tribunal to declare that such powers who so far have not done so shall submit to this tribunal and notify to each party the list of its own claims which are already privileged and the list of such claims which are to share in the distribution of the said 30 per cent (of the custom-house revenues at La Guaira and Puerto Cabello), the undersigned agent begs leave to point out to the tribunal that:

“According to the protocols of May 7, 1903, this tribunal has to give its decision prior to March 1 next, while the Dutch-Venezuelan protocol of February 28 last gives more time to the Dutch-Venezuelan mixed commission at Caracas.

“Article II, paragraph 2 of said protocol, allows the mixed commission to extend its labors even beyond April 1 next.

“The arrangements concluded between Venezuela and some other Powers contain similar provisions.

“At this moment the Dutch-Venezuelan mixed commission has not yet concluded its labors.

“The undersigned agent is therefore unable to communicate to the tribunal the mentioned awards.

“Moreover he thinks that for the tribunal's decision in the present proceedings it is not necessary that the tribunal be acquainted with the separate amount of each award at Caracas, as the tribunal has only to make a proportional repartition (*répartition au marc le franc*).

“The undersigned agent adds that the Netherlands have no preferred claims in the sense of Article I, paragraph 3 of the protocols of May 7, 1903.

“The Hague, November 4, 1903.

“WECKHERLIN,

*“Agent of the Netherlands.”*

The Marquis of Villasinda concurred in the remarks of Mr. de Weckherlin.

At 11 o'clock the president called on Mr. Woeste to speak for Belgium.

At 12.30 the tribunal adjourned till 2.15.

On the reassembling of the tribunal Mr. Woeste, in answer to a remark made to him relating to the documents which he had read in the morning, recalled the terms of the decision of the tribunal of October 2, according to which only the memoranda must be presented in English.

The president said that this declaration of Mr. Woeste would be put on record, and Mr. Woeste then resumed his speech, which he concluded at 2.40.

The president called on Mr. Clunet to speak for France.

At 5 o'clock, Mr. Clunet having concluded his speech, the secretary-general read a telegram of November 3, 1903, from Mr. Pardo, Mexican agent, excusing himself for his inability, owing to illness, to attend for the present the meetings of the tribunal.

The tribunal adjourned at 5.05 p. m. to meet to-morrow at 10.30 a. m.

The Hague, November 4, 1903.

N. MOURAWIEFF,  
*The President.*

L. H. RUYSSENAERS,  
*The Secretary-General.*

RÖELL,  
SCHELKING,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*The Secretaries.*

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[French text.]

Le tribunal s'est réuni à 10 heures 45 du matin.

Le président déclare la séance ouverte et s'exprime comme il suit :

“ Le Tribunal d'Arbitrage reprend ses audiences, l'instruction écrite étant close après l'expiration des délais accordés par la décision du 3 octobre dernier.

Au cours de cette phase de la procédure arbitrale il se fit un échange animé de mémoires et de contre-mémoires, présentés par les parties respectives au nombre total de vingt. Les arbitres ont déjà eu le loisir de s'appliquer à l'étude de ces pièces d'un très grand intérêt, au fur et à mesure qu'elles étaient déposées au secrétariat-général. Elles contiennent le développement détaillé des moyens invoqués dans ce litige et le mettent en pleine lumière sous ses différents aspects. Aussi, avant d'aborder le débat oral, soucieux de ménager un temps précieux pour tous, je crois opportun d'exprimer l'espoir, que les honorables orateurs, confiants dans l'attention soutenue du tribunal, voudront bien concentrer les efforts et les effets de leur éloquence uniquement sur les points culminants de l'affaire et limiter soigneusement l'exposé de leurs arguments à ceux, qui lui sont les plus appropriés. Une semblable retenue, parfaitement conforme à l'élévation, pour ainsi dire, intrinsèque de notre mission, permettrait d'éviter, non seulement les appréciations ne se rapportant pas directement à son objet purement juridique, mais encore les répétitions, toujours plus ou moins inutiles et oiseuses. Il n'est pas besoin d'ajouter que nous sommes persuadés d'avance qu'une entière courtoisie sera la note dominante des discours que nous allons entendre.

Nous vous saurons gré, Messieurs, d'une telle manière d'agir, et la clarté si désirable de la cause, que nous avons à juger, en profitera assurément.

En dernier lieu, je crois devoir attirer l'attention de MM. les délégués sur la nécessité de traiter dans les plaidoiries toutes les conditions stipulées d'une façon générale dans le protocole du 7 mai 1903 et en particulier dans l'article premier, pour que le tribunal puisse remplir sa tâche complètement.

Dans la même préoccupation constante de ne pas perdre de temps inutilement, le tribunal a résolu de siéger tous les jours non fériés, depuis 10½ heures du matin jusqu'à 5 h. ou 5 h. ½ de l'après-midi, avec interruption à l'heure du déjeuner.

Il s'agit maintenant d'un incident à régler pour pouvoir enfin passer aux débats. L'agent de la Grande-Bretagne a soulevé de nouveau, dans un memorandum spécial, une question sur l'ordre des plaidoiries, demandant de donner aux délégués du Vénézuéla et des Etats-Unis d'Amérique pour leurs discours et répliques, non pas leur place alphabétique, mais le premier tour, qui a été admis, à titre d'exception personnelle, en faveur d'un de ces délégués, M. Wayne MacVeagh. Cette question, d'une importance plutôt secondaire, qui a produit un échange d'opinions par écrit entre quelques délégués ne nous a pas paru nécessiter le renouvellement des délibérations préliminaires, vu qu'elle se rattache entièrement à la décision que nous avons déjà prise, le 5 octobre, sur l'ordre de la procédure orale. Ayant en conséquence examiné les revendications nouvellement formulées, le tribunal, en vertu de l'article 46 de la Convention de La Haye, a rendu à l'égard de ces revendications, la décision suivante, qui sera lue par le secrétaire-général.

Le secrétaire général lit ce qui suit :

“ Le tribunal, vu sa décision définitive du 5 octobre sur l'ordre du débat oral et à défaut de tout fait nouveau ou d'accord entre les parties pouvant servir de raison suffisante à une modification quelconque de cette décision, déclare maintenir intégralement l'ordre des plaidoiries, réglé dans la séance du 5 octobre.”

M. Ruyssenaers déclare ensuite avoir reçu, hier au soir, de Monsieur Bowen, le contre-mémoire vénézuélien et la réponse du Vénézuéla au memorandum britannique relatif à l'ordre des plaidoiries et lit une lettre du conseil pour le Vénézuéla du 3 novembre 1903, expliquant que ce contre-mémoire était déjà achevé et imprimé la semaine dernière et qu'un exemplaire en a été remis par lui au président du tribunal à Paris le 1<sup>er</sup> novembre, mais que, par erreur, il avait pensé que la date des échanges était le 4 et non le 2 novembre.

Le président confirme que Monsieur Bowen lui a en effet remis un exemplaire imprimé du contre-mémoire vénézuélien, à la date du 1<sup>er</sup>



novembre, et il demande aux parties si elles consentent à ce que les deux documents dont il s'agit soient reçus valablement par le secrétaire général du tribunal.

Sir Robert Finlay dit que, dans ces conditions, il n'élèvera aucune objection de la part de son Gouvernement; mais comme celui-ci n'a pas été à même de lire ce contre-mémoire, il demande que le délai nécessaire pour y répondre lui soit réservé.

M. Bowen remercie le tribunal et les représentants des parties.

M. Pierantoni dépose sur le bureau du tribunal un exemplaire du Tome XII, deuxième série, du Nouveau Recueil Général de Traités de Monsieur G. Fr. de Martens (1887), ainsi qu'une note du 14 avril 1894 portant projet d'une action collective contre le Vénézuëla, rédigé par les représentants d'Allemagne, Belgique, Espagne et France, à Caracas.

Le secrétaire général donne lecture d'une lettre du délégué de l'Espagne, du 4 novembre, faisant connaître la désignation de Monsieur Clunet, avocat-conseil de la France, pour l'assister aux audiences en qualité d'avocat-conseil.

M. de Weckherlin dépose sur le bureau du tribunal la déclaration suivante:

“ En vue du fait qu'une des parties dans le présent arbitrage demande que ce tribunal dise que chaque Puissance créancière du Vénézuëla, qui ne l'aurait déjà fait, devra fournir, tant au tribunal, qu'aux parties l'état de ses créances déjà garanties et l'état de celles qu'elle prétend faire concourir sur les 30 per cent (des revenus des douanes de La Guayra et de Puerto Cabello).

“ L'agent soussigné prend la liberté de faire observer au tribunal que:

“ D'après les Protocoles du 7 mai 1903 ce tribunal a à donner sa décision avant le 1<sup>er</sup> mars prochain, tandis que le protocole néerlando-vénézuélien du 28 février dernier accorde plus de temps à la Commission mixte néerlando-vénézuélienne à Caracas.

“ L'article II, alinéa 2, de ce protocole permet à la Commission mixte d'étendre ses travaux même au delà du 1<sup>er</sup> avril prochain.

“ Les arrangements conclus par le Vénézuëla avec quelques autres Puissances contiennent des dispositions identiques.

“ A l'heure qu'il est, la Commission mixte néerlando-vénézuélienne n'a pas terminé son examen.

“ L'agent soussigné n'est donc pas en état de communiquer au tribunal les décisions visées de la Commission mixte.

“ Au surplus, il est d'avis que, pour donner sa décision dans le présent arbitrage, le tribunal n'a pas besoin de connaître séparément le chiffre accordé dans chaque cas à Caracas, attendu que le tribunal n'a qu'à procéder à une répartition au marc le franc.

“ L'agent soussigné ajoute que les Pays-Bas n'ont pas de réclamations privilégiées dans le sens de l'article I, alinéa 3, des protocoles du 7 mai 1903.

“ La Haye, le 4 novembre 1903.

“ WECKHERLIN,  
“ *Agent des Pays-Bas.*”

Le Marquis de Villasinda se rallie aux observations de Monsieur de Weckherlin.

A 11 heures le Président donne la parole à Monsieur Woeste pour la Belgique.

Le tribunal suspend la séance à midi et demi jusqu'à 2 heures 15.

A la reprise de la séance, Monsieur Woeste, en réponse à une observation qui lui aurait été faite relativement aux documents lus dans la matinée, rapelle les termes de la décision du Tribunal du 2 octobre, d'après laquelle les mémoires seuls doivent être présentés en anglais.

Le président donne acte de cette déclaration à Monsieur Woeste qui continue ensuite sa plaidoirie et l'achève à 2 heures 40.

Le président donne la parole à Monsieur Clunet, pour la France.

A 5 heures, Monsieur Clunet ayant terminé sa plaidoirie, le secrétaire-général donne lecture d'un télégramme du 3 novembre 1903, adressée par l'agent du Mexique, Monsieur Pardo, qui s'excuse de ne pouvoir, par suite de maladie, assister pour le moment aux séances du tribunal.

La séance est levée à 5 heures 5.

Le tribunal s'ajourne au jeudi 5 novembre à 10 heures et demie.

La Haye, le 4 novembre 1903.

N. MOURAWIEFF,  
*Le Président.*

L. H. RUYSSENAERS,  
*Le Secrétaire-Général.*

RÖELL,  
SCHELKING,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*Les Secrétaires.*



PROTOCOL VI.—MEETING OF THURSDAY, NOVEMBER 5, 1903.

The tribunal met at 10.30 a. m.

The president called on Mr. Bünz to speak for Germany.

Mr. Bünz concluded his speech at 12 o'clock and the tribunal then adjourned till 2 p. m.

On the reassembling of the tribunal the president called on Sir Robert Finlay to speak for Great Britain.

At 5 o'clock the meeting adjourned till 10.30 a. m. to-morrow.

The Hague, November 5, 1903.

N. MOURAWIEFF,  
*The President.*

L. H. RUYSSENAERS,  
*The Secretary-General.*

RÖELL,  
SCHELKING,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*The Secretaries.*

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[French text.]

Le tribunal s'est réuni à 10 heures 30 du matin.

Le président donne la parole à Monsieur Bünz pour l'Allemagne.

A midi Monsieur Bünz termine sa plaidoirie.

La séance est suspendue jusqu'à 2 heures.

A 2 heures la séance est reprise et la parole est donnée à Sir Robert Finlay pour la Grande-Bretagne.

La séance est levée à 5 heures et le tribunal s'ajourne au lendemain 10 heures 30 du matin.

La Haye, le 5 novembre 1903.

N. MOURAWIEFF,  
*Le Président.*

L. H. RUYSSENAERS,  
*Le Secrétaire-Général.*

RÖELL,  
SCHELKING,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*Les Secrétaires.*

## PROTOCOL VII—MEETING OF FRIDAY, NOVEMBER 6, 1903.

The tribunal assembled at 10.40 a. m.

Sir Robert Finlay resumed his speech of the previous day and concluded it at 12.10, when the tribunal adjourned till 2.15 p. m.

On the reassembling of the tribunal the president called on Mr. Cohen, who began his speech for Great Britain and concluded it at 3 o'clock.

The president then called on Mr. Richards to speak also for Great Britain.

Mr. Richards having finished his speech at 3.40, the tribunal took a recess.

At 4 o'clock the tribunal reassembled.

The president called on Mr. Pierantoni to speak for Italy.

At 4.45 Mr. Pierantoni asked for an adjournment.

The president granted this request and the tribunal adjourned till 10.30 a. m. to-morrow.

The Hague, November 6, 1903.

N. MOURAWIEFF,  
*The President.*

L. H. RUYSSENAERS,  
*The Secretary-General.*

RÖELL,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*The Secretaries.*

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[French text.]

Le tribunal s'est réuni à 10 heures 40.

Sir Robert Finlay continue sa plaidoirie qu'il termine à midi 10.

La séance est suspendue jusqu'à 2 heures 15.

A la reprise de la séance, le président donne la parole à Monsieur Cohen qui commence sa plaidoirie pour la Grande-Bretagne et la termine à 3 heures.

Le président donne alors la parole à Monsieur Richards, également pour la Grande-Bretagne.

A 3 heures 40 Monsieur Richards ayant achevé sa plaidoirie, la séance est suspendue.

A 4 heures la séance est reprise.

Le président donne la parole à Monsieur Pierantoni pour l'Italie.

A 4 heures 45 Monsieur Pierantoni demande à suspendre sa plaidoirie.

Accédant à cette demande le président lève la séance et le tribunal s'ajourne au lendemain samedi 7 novembre à 10 heures et demie.

La Haye, le 6 novembre 1903.

N. MOURAWIEFF,  
*Le Président.*

L. H. RUYSSENAERS,  
*Le Secrétaire-Général.*

RÖELI,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*Les Secrétaires.*

PROTOCOL VIII—MEETING OF SATURDAY, NOVEMBER 7, 1903.

The tribunal met at 10.40 a. m.

Mr. Pierantoni resumed his speech.

At 12.30 the tribunal adjourned till 2.30.

On the reassembling of the tribunal Mr. Pierantoni resumed his speech, which he concluded at 3.40.

The president then called on Mr. Pardo to speak for Mexico.

Mr. Pardo concluded his speech at 4.25.

The president then called on Mr. de Weckherlin to speak for the Netherlands and for Sweden and Norway.

Mr. de Weckherlin concluded his speech at 4.45.

The tribunal then adjourned till Monday, November 9, at 10.30 a. m.

The Hague, November 7, 1903.

N. MOURAWIEFF,  
*The President.*

L. H. RUYSSENAERS,  
*The Secretary-General.*

RÖELL,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*The Secretaries.*

[French text.]

Le tribunal s'est réuni à 10 heures 40.

M. Pierantoni continue sa plaidoirie.

La séance est suspendue à midi 30 jusqu'à 2 heures 30.

A la reprise de la séance Monsieur Pierantoni continue sa plaidoirie et l'achève à 3 heures 40.

Le président donne ensuite la parole à Monsieur Pardo pour le Mexique.

M. Pardo achève sa plaidoirie à 4 heures 25.

Le président donne alors la parole à Monsieur de Weckherlin pour les Pays-Bas, la Suède et la Norvège.

M. de Weckherlin achève sa plaidoirie à 4 heures 45.

La séance est levée à la même heure renvoyée au lundi 9 novembre à 10 heures 30.

La Haye, le 7 novembre 1903.

N. MOURAWIEFF,  
*Le Président.*

L. H. RUYSSENAERS,  
*Le Secrétaire-Général.*

RÖELI,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*Les Secrétaires.*

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PROTOCOL IX.—MEETING OF MONDAY, NOVEMBER 9, 1903.

The tribunal met at 10.40 a. m.

At the request of the president, the secretary-general read a letter from Mr. Bowen, of November 9, 1903, announcing the appointment of Mr. José de J. Paul as one of the Venezuelan counsel.

The president declared that, though the hearing of the case was very far advanced, the tribunal considered it possible to admit Mr. Paul if none of the parties raised any objection.

No objection having been raised, Mr. Paul was authorized to appear as one of the Venezuelan counsel.

The president then called on the Marquis de Villasinda to speak for Spain.

The Marquis de Villasinda concluded his speech at 11.30.

The president then called on Mr. Clunet to speak also for Spain.

At 12.30 the tribunal adjourned till 2.35.

On the reassembling of the tribunal Mr. Clunet resumed his speech and concluded it at 3.30.

The president then made the following declaration:

“ Having respect for perfect liberty in the discussions, I have not thought the time opportune to draw attention to the words of one of the British counsel, Mr. Richards, when he spoke of the part played by force and war in international relations, in terms to which it would be difficult for a tribunal founded on peace principles to adhere. Now that this delicate question, which perhaps does not have to do directly with our deliberations, has been again debated,

although in a contrary sense, by the Spanish counsel, in order to dispel all ambiguity I declare in the name of the tribunal that it reserves its decision on this important point, undertaking to elucidate it in its award."

The president then called on Mr. Penfield to speak for the United States of America.

In the course of his speech, Mr. Penfield read a statement by Mr. Bowen which had not appeared in any of the documents deposited with the tribunal.

Sir Robert Finlay demanded that the other parties should be supplied with copies of this statement.

Mr. Penfield maintained that he had not read this statement as evidence, but as part of his argument, and finally offered to withdraw it altogether.

Sir Robert Finlay argued, that as the statement had been read, it was too late to withdraw it and that copies should be communicated.

The president read the following decision:

The tribunal, considering that, according to the rules of The Hague Convention, every document produced with whatever object by one of the parties must be communicated to all the others;

That the document in question (statement by Mr. Bowen) is not among the documents deposited with the tribunal;

Decides:

That copies of this document shall be communicated by Mr. Penfield to the other parties.

Mr. Penfield said that he would gladly comply with this decision.

At 5.10 p. m. the tribunal adjourned till 10.30 a. m. to-morrow.

The Hague, November 9, 1903.

N. MOURAWIEFF,  
*The President.*

L. H. RUYSSENAERS,  
*The Secretary-General.*

RÖELL,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*The Secretaries.*

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[French text.]

Le tribunal se réunit à 10 heures 40.

Sur la demande du président, le secrétaire général lit une lettre de Monsieur Bowen, datée du 9 novembre 1903, annonçant que Monsieur José de J. Paul est accrédité auprès du tribunal comme un des conseils du Vénézuela.

Le président déclare que, malgré l'état déjà fort avancé de la dis-

cussion, le tribunal admet la possibilité d'agréer la présence de Monsieur Paul, à moins d'une opposition des parties.

Aucune objection n'ayant été élevée, Monsieur Paul est admis à se joindre aux Conseils du Vénézuëla.

Le président donne alors la parole au Marquis de Villasinda pour l'Espagne.

Le Marquis de Villasinda achève sa plaidoirie à 11 heures 30.

Le président donne ensuite la parole à Monsieur Clunet, également pour l'Espagne.

Le tribunal suspend la séance à midi 30 jusqu'à 2 heures 35.

A la reprise de la séance, Monsieur Clunet continue, et termine sa plaidoirie à 3 heures 30.

Le président fait alors la déclaration suivante :

" Respectant la liberté entière de la discussion, je n'ai pas cru opportun de relever les paroles d'un des avocats-conseils de la Grande-Bretagne, Monsieur Richards, quand il a émis sur le rôle de la force et de la guerre dans les relations internationales, des considérations auxilles il serait difficile d'adhérer complètement pour un tribunal, issu des principes de la paix. Maintenant que cette question délicate, et peut-être ne se rattachant pas directement à nos délibérations, a été de nouveau débattue, quoique en sens contraire, par l'avocat-counsel de l'Espagne, je tiens à écarter toute équivoque et je déclare, au nom du tribunal, qu'il fait ses réserves sur ce point important, à charge de l'élucider dans sa sentence."

Le président donne la parole à Monsieur Penfield pour les Etats-Unis d'Amérique.

Au cours de sa plaidoirie Monsieur Penfield lit une déclaration de Monsieur Bowen, qui n'avait pas figuré dans les documents déposés devant le tribunal.

Sir Robert Finlay demande que des copies de cette déclaration soient distribuées aux autres parties.

Mr. Penfield explique qu'il n'a point lu cette déclaration à titre de document, mais comme une partie de son argumentation et offre finalement de la retirer.

Sir Robert Finlay fait remarquer que comme la dite déclaration a été lue, il est trop tard pour la retirer et qu'en conséquence elle doit être communiquée.

Le président lit la décision suivante :

Le tribunal, considérant que, d'après les règles de la Convention de la Haye, tout document produit à un titre quelconque par une des parties doit être communiqué à toutes les autres,

Que le document en question (déclaration de M. Bowen) ne se trouve pas dans des actes déposés au tribunal,

Décide :

La copie de ce document sera communiquée par M. Penfield aux autres parties.

M. Penfield dit qu'il se conformera avec plaisir à cette décision.

La séance est levée à 5 heures 10 et renvoyée au lendemain à 10 heures et demie.

La Haye, 9 novembre, 1903.

N. MOURAWIEFF,  
*Le Président.*

L. H. RUYSSENAERS,  
*Le Secrétaire-Général.*

RÖELL,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*Les Secrétaires.*

PROTOCOL X.—MEETING OF TUESDAY, NOVEMBER 10, 1903.

The tribunal met at 11 a. m.

Mr. Penfield resumed his speech of the previous day and concluded it at 12.25.

At the request of the president, the secretary-general reported that he had been supplied by the British counsel with copies of the shorthand notes of their oral arguments, which were at the disposal of any of the parties who desired them.\*

The tribunal adjourned from 12.30 to 2.40.

On the reassembling of the tribunal the president called on Mr. Paul to speak for Venezuela.

In the course of his speech Mr. Paul proposed to read a document which had not been deposited with the tribunal.

Sir Robert Finlay raised an objection and the president ruled that new documents could not be submitted so late in the hearing.

Continuing his speech Mr. Paul said that he desired to state that the Venezuelan Government begged the tribunal to exclude from the distribution of the 30 per cent the amount awarded by the umpire in the matter of the claim of the Caracas Water Company, because this claim consisted of bonds of the public debt, a class of claims excluded by the protocols.

He added that his Government proposed to enter into diplomatic discussion with the Belgian and Mexican Governments with the object of obtaining a revision of the said sentence as well as of the one pronounced in connection with the Martínez del Río claim.

Mr. Paul concluded his speech at 3.45.

The president declared that the first pleadings were now closed and, in calling upon the parties for their replies, expressed the hope that all repetitions would be avoided.

\* Some parties had engaged stenographers on their own account.

He then called on Mr. Woeste to reply for Belgium.

Before commencing his reply, Mr. Woeste protested against the declaration made by Mr. Paul on the subject of the award already given by the mixed commission in the matter of the Caracas Water Company, which would lead to nothing less than a question of the validity of the engagements taken by Venezuela.

In the course of his reply Mr. Woeste begged the tribunal and the parties to make the following rectification in the text of his "Conclusions" at page 5: "The claim of Mr. Paquet was fixed by the mixed commission at Caracas at 325,195 francs 06 and not at 320,000 francs."

Mr. Woeste concluded his reply at 5.10.

The tribunal then adjourned till 10.30 a. m. to-morrow.

The Hague, November 10, 1903.

N. MOURAWIEFF,  
*The President.*

L. H. RUYSSENAERS,  
*The Secretary-General.*

RÖELL,  
JOHN W. GARRETT,  
GRANVILLE,

J. DE BERWICK,  
*The Secretaries.*

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[French text.]

La séance est ouverte à 11 heures.

M. Penfield continue sa plaidoirie pour les Etats-Unis et l'achève à midi 25.

Sur l'invitation du président, le secrétaire général déclare qu'il a reçu des conseils de la Grande-Bretagne les copies de la sténographie de leur argumentation orale, et que ces copies seront mises à la disposition de celles des parties qui le désireront.\*

La séance est levée à midi et demi jusqu'à 2 heures 40.

A la reprise de la séance, le président donne la parole à Monsieur Paul pour le Vénézuëla.

Au cours de sa plaidoirie Monsieur Paul se propose de donner lecture d'un document qui n'a pas été déposé devant le tribunal.

Sir Robert Finlay déclare s'y opposer; le président décide que de nouveaux documents ne sauraient être présentés dans l'état avancé des débats.

Continuant son discours, Monsieur Paul exprime le désir de faire constater que le Gouvernement du Vénézuëla prie le tribunal d'ex-

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\* Certaines parties avaient engagé des sténographes pour leur compte.



clure de la distribution des 30 pour cent le montant de la sentence prononcée par le surarbitre sur la créance des eaux de Caracas, parce que cette créance consiste en titres de la dette publique et que cette catégorie de créances est exclue par les protocoles.

Il ajoute que son Gouvernement se propose d'agir diplomatiquement auprès des Gouvernements belge et mexicain pour obtenir la révision de ladite sentence et de celle qui a été prononcée par rapport à la créance Martínez del Río.

M. Paul achève sa plaidoirie à 3 heures 45.

Le président déclare que les premières plaidoiries sont achevées et invite les parties à présenter leurs répliques, exprimant l'espoir qu'il ne s'y trouvera pas de répétitions.

Il donne la parole à Monsieur Woeste pour répliquer au nom de la Belgique.

Avant de commencer son argumentation, Monsieur Woeste proteste contre les déclarations faites par Monsieur Paul au sujet de la sentence prononcée par la commission mixte relativement à l'affaire des eaux de Caracas et qui ne tendraient à rien moins qu'à mettre en cause la validité des engagements pris par la Vénézuëla.

Au cours de sa réplique, Monsieur Woeste prie le tribunal et les parties de vouloir bien rectifier comme il suit le texte de ses conclusions, p. 11: "la créance de Monsieur Paquet, admise par la commission mixte de Caracas s'élève, non à 320,000 francs, mais à 325,195 francs 06."

M. Woeste achève sa réplique à 5 heures 10.

La séance est levée à la même heure et le tribunal s'ajourne au lendemain, 10 heures et demie.

La Haye, le 10 novembre 1903.

N. MOURAWIEFF,  
*Le Président.*

L. H. RUYSSENAERS,  
*Le Secrétaire Général.*

RÖELI,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*Les Secrétaires.*

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PROTOCOL XI—MEETING OF WEDNESDAY, NOVEMBER 11, 1903.

The tribunal met at 10.40 a. m.

Mr. Woeste requested the tribunal to reject the "conclusions" or "reservations" brought forward by Mr. Paul at yesterday's meeting, since in the present state of the hearing such "conclusions" or "reservations" are no longer admissible.

The president replied that the tribunal considered Mr. Paul's statement as a simple declaration made in the course of his speech, having the character neither of new "conclusions" nor of "reservations," which could not be accepted by the tribunal. Consequently the tribunal has not to render a decision on this statement which shall appear succinctly in the protocol.

At 10.45 the president called on Mr. Clunet to reply to France.

Before concluding his reply, at 11.40, Mr. Clunet asked leave to insert the following correction, by way of complement, on page 18 of his countercase, paragraph 4: "Together with such interest as the tribunal may think fit."

The secretary-general then announced that Mr. Bünz had deposited with the tribunal copies of his oral argument, which were at the disposal of the parties.

At 11.40 the president called on Mr. Bünz to reply for Germany.

At 12 o'clock the tribunal adjourned till 2.35.

On the reassembling of the tribunal, Mr. Bünz resumed his reply, in the course of which he made the following declaration:

"As to the question of interest, I am without instructions. If priority is given to the blockading powers, this priority must be respected. If there be no priority for the blockading powers, no advantage must be given to one power over the other. The court has to decide on the question of its competence on this question."

Mr. Bünz concluded his reply at 3.20.

With the permission of the president, and with the reservation of the right of the other parties to do the same, Mr. Woeste then read the following rectification:

"The undersigned for rectification to his first conclusions begs the court to admit to the allotment of the 30 per cent the Belgian claims previously stated, together with such interest as the court may think fit."

At 3.25 the president called on Sir Robert Finlay to reply for Great Britain.

At 5.05 the tribunal adjourned till 10.30 a. m. to-morrow.

The Hague, November 11, 1903.

N. MOURAWIEFF,  
*The President.*

L. H. RUYSSENAERS,  
*The Secretary-General.*

RÖELL,

JOHN W. GARRETT,  
GRANVILLE,

J. DE BERWICK,  
*The Secretaries.*

[French text.]

La séance est ouverte à 10 heures 40.

M. Woeste demande au tribunal de ne point admettre les "conclusions" ou "réserves" que Monsieur Paul a formulées dans la séance d'hier, attendu que, dans l'état actuel de la cause, de pareilles "conclusions" ou "réserves" ne sont plus admissibles.

Le président répond que le tribunal considère les communications de Monsieur Paul comme de simples déclarations faites au cours de sa plaidoirie et n'ayant le caractère ni de "conclusions" nouvelles, ni de "réserves," qui d'ailleurs ne sont pas recevables en justice. En conséquence, le tribunal n'a pas à statuer sur ces déclarations, qui figureront succinctement au protocole.

Le président donne ensuite la parole à Monsieur Clunet pour répliquer au nom de la France.

En achevant sa réplique à 11 heures 40, Monsieur Clunet déclare faire un renvoi complémentaire au dispositif des conclusions de la France. (Contre-mémoire, page 44, paragraphe 5.) Ce renvoi complémentaire est ainsi conçu: "Avec les intérêts au taux qu'il plaira au tribunal fixer."

Le secrétaire général annonce qu'il a reçu des copies de l'argumentation orale de Monsieur Büinz et que ces copies seront mises à la disposition des parties.

A 11 heures 40, le président donne la parole à Monsieur Büinz pour répliquer au nom de l'Allemagne.

La séance est suspendue à midi, jusqu'à 2 heures 35.

A la reprise de la séance, Monsieur Büinz continue sa réplique, au cours de laquelle il est amené à déclarer ce qui suit:

"Quant à la question des intérêts, je n'ai pas d'instructions. Si une priorité est accordée aux Puissances bloquantes, il faut que cette priorité soit respectée. S'il n'est pas accordé de priorité aux Puissances bloquantes, aucun avantage ne doit être alloué à une Puissance au détriment des autres. La cour aura à statuer sur la question de sa compétence sur cette question."

M. Büinz achève sa réplique à 3 heures 20.

Avec la permission du président et sous réserve du droit pour les autres parties d'agir de même, Monsieur Woeste donne lecture de la rectification complémentaire suivante:

"Le soussigné, par rectification à ses premières conclusions, sollicite le tribunal de bien vouloir admettre à la répartition des 30 pour cent les créances belges précédemment indiquées avec les intérêts au taux qu'il plaira au tribunal de fixer."

A 3 heures 25, le président donne la parole à Sir Robert Finlay pour répliquer au nom de la Grande Bretagne.

La séance est levée à 5 heures 5 et renvoyée au lendemain 10 heures et demie.

La Haye, le 11 novembre 1903.

N. MOURAWIEFF,  
*Le Président.*

L. H. RUYSSENAERS,  
*Le Secrétaire-Général.*

RÖELL,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*Les Secrétaires.*

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PROTOCOL XII.—MEETING OF THURSDAY, NOVEMBER 12, 1903.

The tribunal met at 10.35 a. m.

The president called on Mr. Bowen to read a telegram from Mr. Hay, Secretary of State of the United States, on the subject of the amounts of the Spanish and Swedish and Norwegian claims which had been fixed by the mixed commissions.

The president observed that this was a mere rectification of figures.

At 10.40 Sir Robert Finlay resumed his reply for Great Britain and concluded it at 11.35.

At the request of the president, the secretary-general announced that Mr. Pardo had deposited with the tribunal copies of his oral argument, which were at the disposal of the parties.

At 11.40 the president called on Mr. Pierantoni to reply for Italy.

At 12.35 the tribunal adjourned till 2.40.

On the reassembling of the tribunal Mr. Pierantoni resumed his reply and concluded it at 3.35.

At the request of the president, the secretary-general announced that Mr. Pierantoni had deposited with the tribunal a résumé of his "conclusions," copies of which had been distributed to the parties.

The president then called on Mr. Pardo to reply for Mexico.

At 4 o'clock, Mr. Pardo having concluded his reply, the president called on Mr. de Weckherlin to reply for the Netherlands and Sweden and Norway.

At 4.10, Mr. de Weckherlin having concluded his reply, the president called on Mr. Clunet to reply for Spain.

Mr. Clunet concluded his reply at 5.30.

The tribunal adjourned till 10 a. m. to-morrow.

The Hague, November 12, 1903.

N. MOURAWIEFF,  
*The President.*

L. H. RUYSSENAERS,  
*The Secretary-General.*

RÖELL,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*The Secretaries.*

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[French text.]

La séance est ouverte à 10 heures 35.

Le président donne la parole à Monsieur Bowen pour lire un télégramme de Monsieur Hay, Secrétaire d'Etat des Etats-Unis, relatif à la fixation par les commissions mixtes du montant des créances de l'Espagne et de la Suède et Norvège.

Le président fait remarquer que c'est là une simple rectification de chiffres.

A 10 heures 40, le président donne la parole à Sir Robert Finlay pour continuer, au nom de la Grande-Bretagne sa réplique, qu'il achève à 11 heures 35.

Sur l'invitation du président, le secrétaire général déclare que Monsieur Pardo a déposé devant le tribunal des copies de son argumentation orale, qui seront tenues à la disposition des parties.

A 11 heures 40, le président donne la parole à Monsieur Pierantoni pour répliquer au nom de l'Italie.

La séance est suspendue à midi 35 jusqu'à 2 heures 40.

A la reprise de la séance, le président donne la parole à Monsieur Pierantoni pour continuer sa réplique, qu'il achève à 3 heures 35.

Sur l'invitation du président, le secrétaire général déclare que Monsieur Pierantoni a déposé devant le tribunal un résumé de ses "conclusions," dont des copies ont été transmises aux parties.

Le président donne alors la parole à Monsieur Pardo pour répliquer au nom du Mexique.

A 4 heures, Monsieur Pardo ayant terminé sa réplique, le président donne la parole à Monsieur de Weckherlin pour répliquer au nom des Pays-Bas et de la Suède et Norvège.

A 4 heures 10 Monsieur de Weckherlin ayant terminé sa réplique, la parole est donnée à Monsieur Clunet pour répliquer au nom de l'Espagne.

M. Clunet achève sa réplique à 5 heures 30.

La séance est alors levée et renvoyée au lendemain 10 heures.  
La Haye, le 12 novembre 1903.

N. MOURAWIEFF,  
*Le Président.*  
L. H. RUYSSENAERS.  
*Le Secrétaire Général.*  
RÖELL,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*Les Secrétaires.*

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PROTOCOL XIII—MEETING OF FRIDAY, NOVEMBER 13, 1903.

The tribunal met at 10.20 a. m.

The secretary-general announced that Mr. Pierantoni had deposited with him figures of the blockade expenses incurred by the Italian Government, mentioned yesterday in his reply. They amount to 497,159.39 lire, about £20,000.

The president called on Mr. Penfield to reply for the United States. Mr. Penfield concluded his reply at 11.25.

Mr. de Weckherlin obtained permission to state that he had received a telegram from the minister for foreign affairs at Stockholm confirming the finding of the mixed commission on the Swedish and Norwegian claims reported by Mr. Bowen yesterday. The labors of the Netherland-Venezuelan mixed commission were nearly, though not yet quite, concluded.

The president then called on Mr. Paul to reply for Venezuela, and requested him to avoid any protests against findings of the mixed commissions at Caracas, as these were outside the competence of the tribunal.

Mr. Paul concluded his reply at 11.50.

At the request of the president the secretary-general read the following decision of the tribunal:

The tribunal, in view of the declarations of the counsel for Spain in his reply and the arguments brought forward in the other cases and pleadings as the necessity of depositing before the tribunal the complete table of the claims already recognized by the mixed commissions sitting at Caracas, and in virtue of articles 44 and 49 of The Hague convention,

Decides:

These tables of claims can be transmitted by those parties who have not yet done so to the secretary-general without any comment or conclusions with a sufficient number of copies within a month—that is to say, till the 15th December, 1903, inclusively.

Sir Robert Finlay rose to thank the tribunal, in the name of all the counsel, for their patience and attention.

The president spoke as follows:

"The final moment has come. We have reached the end of the oral debates and I pronounce them closed.

Before separating, permit me, gentlemen, to express very cordially, in the name of the tribunal, to the representatives of the parties, agents and counsel, our deep gratitude for the valuable and indefatigable assistance that they have not failed to accord us in our laborious search after truth. It is now for us to put this truth in a form as clear and complete as is possible within the narrow bounds of human justice, and we shall bring to it all the power and all the strength of our conscience and of our mind. I thank you, gentlemen, furthermore, for the perfect courtesy toward the tribunal from which you have never departed and which has always remained worthy of the gravity of its important deliberations. These are now coming to an end, but their immense significance will make a deep furrow in the fertile field of pacific arbitration, and we hope that, for the greatest good of the world, the development and abundant growth of these health-giving seeds will not have to be long awaited.

Finally I discharge a most agreeable duty in extending our hearty thanks to the secretary-general and the secretaries who have relieved us with exemplary zeal and admirable precision of the heavy burden of the material and technical work.

The tribunal has decided to adjourn sine die, to meet again to render its decision within the limits of the time set for this purpose by the protocol of Washington of May 7, 1903. The parties will be advised in good time of the date on which the final award will be pronounced."

At 12 noon the tribunal adjourned.

The Hague, November 13, 1903.

N. MOURAWIEFF,  
*The President.*

L. H. RUYSSENAERS,  
*The Secretary-General.*

RÖELL,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*The Secretaries.*

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[Translation.]

La séance est ouverte à 10 heures 20.

Le secrétaire général déclare que Monsieur Pierantoni lui a remis l'état des frais du blocus supportés par le Gouvernement italien, dont il a fait mention hier dans sa réplique. Ces frais s'élèvent à lires 497,159.39, soit environ 20,000 livres sterling.



Le président donne la parole à Monsieur Penfield pour répliquer au nom des Etats-Unis.

M. Penfield termine sa réplique à 11 heures 25.

M. de Weckherlin demande et obtient la permission de déclarer qu'il a reçu un télégramme du ministre des affaires étrangères à Stockholm confirmant la communication faite hier par Monsieur Bowen relativement aux décisions rendues par les commissions mixtes de Caracas à l'égard des réclamations de la Suède et de la Norvège. Il ajoute qu'en ce qui concerne les réclamations hollandaises, les travaux des commissions mixtes ne sont pas encore entièrement terminés.

Le président donne ensuite la parole à Monsieur Paul pour répliquer au nom du Vénézuëla, et invite l'orateur à éviter toute protestation contre les décisions des commissions mixtes à Caracas, attendu que ces décisions ne rentrent pas dans la compétence du tribunal.

M. Paul achève sa réplique à 11 heures 50.

Le secrétaire-général lit la décision suivante du tribunal :

Le tribunal, vu les déclarations de l'avocat-consell de l'Espagne dans sa réplique et les indications fournies dans les autres mémoires et plaidoiries sur la nécessité de déposer au procès l'état complet des créances, déjà reconnues par les commissions mixtes siégeant à Caracas, et en vertu des articles 44 et 49 de la convention de la Haye ;

Décide :

Ces états pourront être transmis par les parties, qui ne l'ont pas encore fait, au secrétaire-général, sans aucun commentaire ni conclusions, en nombre suffisant d'exemplaires, dans le cours d'un mois, savoir jusqu'au 15 décembre 1903 inclusivement.

Sir Robert Finlay, au nom de tous les conseils, adresse des remerciements au tribunal pour la patience et l'attention qu'il a bien voulu accorder à chacun.

Le président prononce les paroles suivantes :

“Le moment final approche. Nous sommes arrivés au terme du débat oral et je prononce sa clôture.

“Avant de nous séparer, laissez-moi, messieurs, exprimer très cordialement, au nom du tribunal, aux représentants des parties, agents et avocats-conseils, toute notre gratitude pour le concours précieux et infatigable qu'ils ne nous ont pas ménagé dans notre marche laborieuse à la recherche de la vérité. C'est à nous maintenant de la formuler aussi claire et complète qu'il est possible pour les moyens bornés de la justice humaine, et nous y apporterons toutes les facultés, toutes les forces de notre conscience et de notre raison. Je vous remercie, messieurs, en plus, de la parfaite courtoisie envers le tribunal, dont vous ne vous êtes jamais départis et qui est restée toujours digne de la gravité de ses importantes délibérations. Elles vont prendre fin, mais leur portée immense aura creusé un sillon profond dans le terrain fertile de l'arbitrage pacifique, et nous espérons, que, pour le



plus grand bien des nations, le développement et l'éclosion abondante de ces germes salutaires ne se feront pas attendre.

Enfin, je m'acquitte d'un devoir des plus agréables en adressant des remerciements chaleureux à monsieur le secrétaire général et à messieurs les secrétaires, qui nous ont allégé avec un dévouement exemplaire et une précision admirable du lourd fardeau de la besogne matérielle et technique.

Le tribunal décide de s'ajourner sine die pour la sentence dans les limites du délai accordé à cet effet par les protocoles de Washington du 7 mai 1903. Les parties seront avisées en temps utile de la date, à laquelle l'arrêt définitif pourra être prononcé."

La séance est levée à midi.

La Haye, le 13 novembre 1903.

N. MOURAWIEFF,  
*Le Président.*

L. H. RUYSSENAERS,  
*Le Secrétaire Général.*

RÖELL,  
JOHN W. GARRETT,  
GRANVILLE,  
J. DE BERWICK,  
*Les Secrétaires.*

PROTOCOL XIV—MEETING OF MONDAY, FEBRUARY 22, 1904.

The tribunal met at 11 a. m., with closed doors, all the arbitrators being present.

The three arbitrators signed the final award of the tribunal, which is to be preserved in the archives of the International Bureau of the Permanent Court of Arbitration, and a certified copy of which will be handed to each party of the litigation.

At 11.15 a. m. the meeting with closed doors came to an end and was immediately followed by a public meeting.

All the arbitrators were present, and also:

Mr. Charles Cornez, secretary of the counsel of the Belgian Government;

Mr. Louis Renault, agent of the French Government;

Mr. Fromageot, secretary of the French delegation;

His Excellency Mr. de Schloezer, the German minister, who had been appointed to represent his Government;

Mr. Arthur Larcom, agent of the British Government;

Mr. Gregory, secretary of the British delegation;

His Excellency Mr. Emilio Pardo, minister of the United States of Mexico, agent of the Mexican Government;

Mr. de Weckherlin, agent of the Netherlands and of the Swedish and Norwegian Governments;

Mr. Crommelin, secretary of the Netherlands agent;

Mr. José de J. Paul, counsel for Venezuela.

The president called on the secretary-general of the Tribunal of Arbitration to read the award of the tribunal, which is as follows:

"The Tribunal of Arbitration, constituted in virtue of the protocols signed at Washington on May 7, 1903, between Germany, Great Britain, and Italy on the one hand and Venezuela on the other hand;

Whereas other protocols were signed to the same effect by Belgium, France, Mexico, the Netherlands, Spain, Sweden and Norway, and the United States of America on the one hand and Venezuela on the other hand;

Whereas all these protocols declare the agreement of all the contracting parties with reference to the settlement of the claims against the Venezuelan Government;

Whereas certain further questions, arising out of the action of the Governments of Germany, Great Britain, and Italy concerning the settlement of their claims, were not susceptible of solution by the ordinary diplomatic methods;

Whereas the powers interested decided to solve these questions by submitting them to arbitration, in conformity with the dispositions of the convention, signed at The Hague on July 29, 1899, for the pacific settlement of international disputes;

Whereas, in virtue of Article III of the protocols of Washington of May 7, 1903, His Majesty the Emperor of Russia was requested by all the interested powers to name and appoint from among the members of the Permanent Court of Arbitration of The Hague three arbitrators who shall form the Tribunal of Arbitration charged with the solution and settlement of the questions which shall be submitted to it in virtue of the above-named protocols;

Whereas none of the arbitrators thus named could be a citizen or subject of any one of the signatory or creditor powers, and whereas the tribunal was to meet at The Hague on September 1, 1903, and render its award within a term of six months;

His Majesty the Emperor of Russia, conforming to the request of all the signatory powers of the above-named protocols of Washington of May 7, 1903, graciously named as arbitrators the following members of the Permanent Court of Arbitration:

His Excellency Mr. N. V. Mourawieff, secretary of state of His Majesty the Emperor of Russia, actual privy councillor, minister of justice and procurator-general of the Russian Empire,

His Excellency Mr. H. Laminasch, professor of criminal and international law at the University of Vienna, member of the Upper House of the Austrian Parliament, and

His Excellency Mr. F. de Martens, doctor of law, privy councillor, permanent member of the council of the Russian ministry of foreign affairs, member of the "Institut de France;"

Whereas by unforeseen circumstances the Tribunal of Arbitration could not be definitely constituted till October 1, 1903, the arbitrators, at their first meeting on that day, proceeding in conformity with Article XXXIV of the convention of July 29, 1899, to the nomination of the president of the tribunal, elected as such His Excellency Mr. Mourawieff, minister of justice;

And whereas in virtue of the protocols of Washington of May 7, 1903, the above-named arbitrators, forming the legally constituted Tribunal of Arbitration, had to decide, in conformity with Article I of the protocols of Washington of May 7, 1903, the following points:

The question as to whether or not Germany, Great Britain, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela, and its decision shall be final.

Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guayra and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenue shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal, in that case, shall consider, in connection with the payment of the claims out of the 30 per cent, any preference or pledges of revenues enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution, so that no power shall obtain preferential treatment, and its decision shall be final.

Whereas the above-named arbitrators, having examined with impartiality and care all the documents and acts presented to the Tribunal of Arbitration by the agents of the powers interested in this litigation, and having listened with the greatest attention to the oral pleadings delivered before the tribunal by the agents and counsel of the parties to the litigation;

Whereas the tribunal, in its examination of the present litigation, had to be guided by the principles of international law and the maxims of justice;

Whereas the various protocols signed at Washington since February 13, 1903, and particularly the protocols of May 7, 1903, the obligatory force of which is beyond all doubt, form the legal basis for the arbitral award;

Whereas the tribunal has no competence at all either to contest the jurisdiction of the mixed commissions of arbitration established at Caracas, nor to judge their action;

Whereas the tribunal considers itself absolutely incompetent to give a decision as to the character or the nature of the military

operations undertaken by Germany, Great Britain, and Italy against Venezuela;

Whereas also the Tribunal of Arbitration was not called upon to decide whether the three blockading powers had exhausted all pacific methods in their dispute with Venezuela in order to prevent the employment of force;

And it can only state the fact that since 1901 the Government of Venezuela categorically refused to submit its dispute with Germany and Great Britain to arbitration, which was proposed several times and especially by the note of the German Government of July 16, 1901.

Whereas after the war between Germany, Great Britain, and Italy on the one hand and Venezuela on the other hand no formal treaty of peace was concluded between the belligerent powers;

Whereas the portocols signed at Washington on February 13, 1903, had not settled all the questions in dispute between the belligerent parties, leaving open in particular the question of the distribution of the receipts of the customs of La Guaira and Puerto Cabello;

Whereas the belligerent powers, in submitting the question of preferential treatment in the matter of these receipts to the judgment of the Tribunal of Arbitration, agreed that the arbitral award should serve to fill up this void and to insure the definite reestablishment of peace between them;

Whereas, on the other hand, the warlike operations of the three great European powers against Venezuela ceased before they had received satisfaction on all their claims, and, on the other hand, the question of preferential treatment was submitted to arbitration, the tribunal must recognize in these facts previous evidence in favor of the great principle of arbitration in all phases of international disputes;

Whereas the blockading powers, in admitting the adhesion to the stipulations of the protocols of February 13, 1903, of the other powers which had claims against Venezuela, could evidently not have the intention of renouncing either their acquired rights or their actual privileged position;

Whereas the Government of Venezuela in the protocols of February 13, 1903 (Article I), itself recognizes "in principle the justice of the claims" presented to it by the Governments of Germany, Great Britain, and Italy;

While in the protocol signed between Venezuela and the so-called neutral or pacific powers the justice of the claims of these latter was not recognized in principle;

Whereas the Government of Venezuela until the end of January, 1903, in no way protested against the pretention of the blockading

powers to insist on special securities for the settlement of their claims;

Whereas Venezuela itself during the diplomatic negotiations always made a formal distinction between "the allied powers" and "the neutral or pacific powers;"

Whereas the neutral powers, who now claim before the Tribunal of Arbitration equality in the distribution of the 30 per cent of the customs receipts of La Guaira and Puerto Cabello, did not protest against the pretensions of the blockading powers to a preferential treatment either at the moment of the cessation of the war against Venezuela or immediately after the signature of the protocols of February 13, 1903;

Whereas it appears from the negotiations, which resulted in the signature of the protocols of February 13 and May 7, 1903, that the German and British Governments constantly insisted on their being given guaranties for "a sufficient and punctual discharge of the obligations" (British memorandum of December 23, 1902, communicated to the Government of the United States of America);

Whereas the plenipotentiary of the Government of Venezuela accepted this reservation on the part of the allied powers without the least protest;

Whereas the Government of Venezuela engaged, with respect to the allied powers alone, to offer special guaranties for the accomplishment of its engagements;

Whereas the good faith which ought to govern international relations imposes the duty of stating that the words "all claims" used by the representative of the Government of Venezuela in his conferences with the representatives of the allied powers (Statement left in the hands of Sir Michael Herbert by Mr. H. Bowen, of January 23, 1903), could only mean the claims of these latter and could only refer to them;

Whereas the neutral powers, having taken no part in the warlike operations against Venezuela, could in some respects profit by the circumstances created by those operations, but without acquiring any new rights;

Whereas the rights acquired by the neutral or pacific powers with regard to Venezuela remain in the future absolutely intact and guaranteed by respective international arrangements;

Whereas in virtue of Article V of the protocols of May 7, 1903, signed at Washington, the tribunal "shall also decide, subject to the general provisions laid down in Article LVII of the International Convention of July 29, 1899, how, when, and by whom the costs of this arbitration shall be paid;"

For these reasons, the Tribunal of Arbitration decides and pronounces unanimously that:

(1) Germany, Great Britain, and Italy have a right to preferential treatment for the payment of their claims against Venezuela;

(2) Venezuela having consented to put aside 30 per cent of the revenues of the customs of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the three above-named powers have a right to preference in the payment of their claims by means of these 30 per cent of the receipts of the two Venezuelan ports above mentioned;

(3) Each party to the litigation shall bear its own costs and an equal share of the costs of the tribunal.

The Government of the United States of America is charged with seeing to the execution of this latter clause within a term of three months.

Done at The Hague, in the Permanent Court of Arbitration, February 22, 1904.

(Signed)

(Signed)

(Signed)

N. MOURAWIEFF.

H. LAMMASCH.

MARTENS."

The president then spoke as follows:

"The Tribunal of Arbitration, instituted by agreement of the powers to settle the principal judicial question which arose out of the Venezuelan dispute, has concluded its mission. The official copies of the award, which has just been pronounced, will be delivered to-day by the intermediary of the secretary-general to the representatives of the parties to the litigation. This award, duly notified, is, by the terms of article 1 of the protocols signed at Washington May 7, 1903, and of article 54 of the convention of July 29, 1899, final and beyond appeal.

"The conscience of the arbitrators, who have delivered the award, was sufficiently enlightened by a thorough examination of the case, and they have given their decision after mature reflection, with complete impartiality and independence. Their unanimous and carefully elaborated decision is, like every human action, susceptible of adverse criticism, but, as a judicial thing finally decided, it is beyond, if not above, opposition and resistance. International justice has spoken—one can only bow before its decree.

"Obviously, it is neither the time nor the place for politics and we will not treat of politics, but may I say only a few words before closing this grand manifestation of the conciliatory spirit of nations, and give expression to a few personal considerations on the subject of recent events, which have, alas, so unfavorably changed the circumstances under which we first met within these hospitable walls. We



began our labors in the midst of a more or less peaceful situation; we finish our task to the sinister sound of arms. Thus it is willed by the implacable law of history, or rather by the flagrant imperfection of the conditions which confine human nature, too often hindered in its laborious progress toward light and right. We aspire to peace with all the strength of our soul, and labor for it assiduously with conviction and fervor—and, nevertheless, we are not safe from a hostile challenge, from an unexpected attack. We sincerely desire the maintenance of peace—and we are forced to accept courageously a war of legitimate self-defense in the name of the honor and dignity of our country. In this painful conflict of heart and duty there remains one supreme consolation—warm and absolute faith in the just Providence of peoples and of battles, who will know how to distinguish between valid right and ambitious pretensions, between calm resolution and immovable constancy on the one hand and warlike zeal and passionate ardor on the other. But when the tempest, which throws the two currents, European and Asiatic, into such violent collision, shall at last have passed—and everything passes in this world—then, we religiously believe the thick clouds which have darkened our horizon will be scattered and a restoring calm will appear again and make the benefits—a moment forgotten—of peaceful development shine more brilliantly than ever. The Hague Arbitration, created by such generous wisdom, remains what it is—a rampart of justice, of truth, and of reason, a sublime hope of a better future.

“I declare the present last meeting closed and the Tribunal of Arbitration formally dissolved.”

The sitting of the tribunal was closed at 12 noon.

The Hague, February 22, 1904.

N. MOURAWIEFF,  
*The President.*

L. H. RUYSSENAERS,  
*The Secretary-General.*

RÖELL,  
GRANVILLE,  
*The Secretaries.*

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[French text.]

Le tribunal s'est réuni à 11 heures du matin à portes closes, tous les arbitres étant présents.

Les trois arbitres ont signé la sentence définitive du tribunal qui est destinée à être déposée dans les archives du Bureau International de la Cour Permanente d'Arbitrage et dont une copie certifiée conforme sera remise à chaque partie en litige.

A 11½ heures la séance à portes closes a pris fin et a été immédiate-

ment suivie d'une séance publique, tous les arbitres étant présents, ainsi que :

Son Excellence Monsieur de Schlozer, ministre d'Allemagne, qui avait été désigné pour représenter son Gouvernement ;

Monsieur Charles Cornez, secrétaire de l'avocat conseil du Gouvernement belge ;

Son Excellence Monsieur Emilio Pardo, ministre des Etats-Unis Mexicains, agent du Gouvernement mexicain ;

Monsieur Louis Renalt, agent du Gouvernement française ;

Monsieur Fromageot, secrétaire de la délégation française ;

Monsieur Arthur Larcom, agent du Gouvernement britannique ;

Monsieur Gregory, secrétaire de la délégation britannique ;

Monsieur de Weckherlin, agent des Gouvernement des Pays-Bas et de Suède et Norvège ;

Monsieur Crommelin, secrétaire de l'agent des Pays-Bas ;

Monsieur José de J. Paul conseil du Gouvernement vénézuélien.

Le président donne la parole au secrétaire général du tribunal d'arbitrage pour lire la sentence arbitrale, dont voici la teneur :

Le tribunal d'arbitrage, constitué en vertu des protocoles, signés à Washington, le 7 mai 1903, entre l'Allemagne, la Grande-Bretagne et l'Italie d'une part, et le Vénézuéla d'autre part ;

Considérant que d'autres protocoles ont été signés à cet effet entre la Belgique, l'Espagne, les Etats-Unis d'Amérique, la France, le Mexique, les Pays-Bas, la Suède et Norvège d'une part, et le Vénézuéla d'autre part ;

Considérant que tous ces actes constatent l'accord de toutes les parties contractantes relativement au règlement des réclamations contre le gouvernement vénézuélien ;

Considérant que diverses autres questions, résultant de l'action des gouvernements d'Allemagne, de Grande-Bretagne et d'Italie concernant le règlement des réclamations, n'étaient pas susceptibles d'une solution par la voie diplomatique ordinaire ;

Considérant que les puissances intéressées ont décidé de résoudre ces questions en les soumettant à l'arbitrage, conformément aux dispositions de la convention, signée à La Haye le 29 juillet 1899, pour le règlement pacifiques des conflits internationaux ;

Considérant qu'en vertu de l'article III des protocoles de Washington du 7 mai 1903, Sa Majesté l'Empereur de Russie a été invité par toutes les puissances intéressées à désigner parmi les membres de la Cour permanente d'arbitrage de La Haye trois arbitres, qui formeront le tribunal d'arbitrage chargé de résoudre et de régler les questions qui lui seront soumises en vertu des protocoles susmentionnés ;

Attendu qu'aucun des arbitres ainsi désignés ne pourrait être citoyen ou sujet de l'une quelconque des puissances signataires ou



créancières, et que le tribunal devrait se réunir à La Haye le 1<sup>er</sup> septembre 1903 et rendre sa sentence dans le délai de six mois;

Sa Majesté l'Empereur de Russie, en se rendant au désir de toutes les puissances signataires des protocoles susmentionnés de Washington du 7 mai 1903, a daigné nommer comme arbitres les membres suivants de la cour permanente d'arbitrage à La Haye:

Son Excellence Monsieur N. V. Mourawieff, secrétaire d'état de Sa Majesté l'Empereur de Russie, conseiller privé actuel, ministre de la justice et procureur-général de l'Empire de Russie;

Monsieur H. Lammasch, professeur de droit pénal et de droit international à l'Université de Vienne, membre de la chambre des seigneurs du parlement autrichien, et

Son Excellence Monsieur F. de Martens, docteur en droit, conseiller privé, membre permanent du conseil du ministère des affaires étrangères de Russie, membre de l'Institut de France;

Attendu que par des circonstances imprévues le tribunal d'arbitrage ne put être constitué définitivement que le 1<sup>er</sup> octobre 1903, les arbitres, dans leur première réunion du même jour, en procédant conformément à l'Article XXXIV de la convention du 29 juillet 1899, à la nomination du président du tribunal, ont élu comme tel Son Excellence Monsieur Mourawieff, ministre de la justice;

Et attendu qu'en vertu des protocoles de Washington du 7 mai 1903, les susmentionnés arbitres, réunis en tribunal d'arbitrage, légalement constitué, devaient décider, conformément à l'Article I des protocoles de Washington du 7 mai 1903, ce qui suit:

La question de savoir, si l'Allemagne, la Grande-Bretagne et l'Italie ont, ou n'ont pas, droit à un traitement préférentiel ou séparé pour le paiement de leurs réclamations contre le Vénézuéla et la trancher sans appel;

Le Vénézuéla ayant consenti à mettre de côté 30 pour cent du revenu des douanes de La Guayra et de Puerto Cabello pour le paiement des réclamations de toutes les nations contre le Vénézuéla, le tribunal de La Haye décidera comment ces recettes seront réparties entre les puissances qui ont effectué le blocus d'une part, et les autres puissances créancières d'autre part, et sa décision sera sans appel.

Si un traitement préférentiel ou séparé n'est pas accordé aux puissances bloquantes, le tribunal décidera comment les susdits revenus seront répartis entre toutes les puissances créancières; et les parties conviennent que, dans ce cas, le tribunal prendra en considération, par rapport aux paiements, à effectuer au moyen de 30 pour cent tout droit de préférence ou de gage sur les revenus dont serait titulaire l'une quelconque des puissances créancières, et le tribunal tranchera en conséquence la question de répartition de façon qu'aucune puissance ne jouisse d'un traitement préférentiel, et sa décision sera sans appel.

Attendu que les susmentionnés arbitres, ayant examiné avec impartialité et soin tous les documents et actes, présentés au tribunal d'arbitrage par les agents des puissances intéressées dans ce litige, et ayant entendu avec la plus grande attention les plaidoiries orales, pro-

noncées devant le tribunal, par les agents et conseils des parties en litige;

Considérant que le tribunal, en examinant le présent litige devait se régler d'après les principes du droit international et les notions de la justice;

Considérant que les différents protocoles signés à Washington depuis le 13 février 1903 et particulièrement les protocoles du 7 mai 1903, dont la force obligatoire ne saurait être mise en doute, forment la base légale de la sentence arbitrale;

Considérant que le tribunal d'arbitrage n'est nullement compétent ni pour contester la juridiction des commissions mixtes arbitrales, établies à Caracas, ni pour juger leur action;

Considérant que le tribunal ne se reconnaît absolument aucune compétence pour porter un jugement sur le caractère ou la nature des opérations militaires entreprises par l'Allemagne, la Grande-Bretagne et l'Italie contre le Vénézuéla;

Considérant que le tribunal d'arbitrage n'était non plus appelé à décider si les trois puissances bloquantes avaient épuisé dans leur conflit avec le Vénézuéla tous les moyens pacifiques, afin de prévenir l'emploi de la force.

Qu'il peut seulement constater le fait que depuis 1901 le gouvernement du Vénézuéla refusait catégoriquement de soumettre son conflit avec l'Allemagne et la Grande-Bretagne à l'arbitrage, proposé à plusieurs reprises et tout spécialement par la note du gouvernement allemand du 16 juillet 1901,

Considérant qu'après la guerre entre l'Allemagne, la Grande-Bretagne et l'Italie d'une part, et le Vénézuéla d'autre part, aucun traité formel de paix ne fut conclu entre les puissance belligérantes;

Considérant que les protocoles, signés à Washington le 13 février 1903, n'avaient point réglé toutes les questions en litige entre les parties belligérantes, en laissant particulièrement ouverte la question de la répartition des recettes des douanes de La Guayra et de Puerto Cabello;

Considérant que les puissances belligérantes, en soumettant la question du traitement préférentiel par rapport à ces recettes au jugement du tribunal d'arbitrage, sont tombées d'accord que la sentence arbitrale doit servir à compléter cette lacune et à assurer le rétablissement définitif de la paix entre elles.

Considérant d'une part que les opérations de guerre des trois grandes puissances européennes contre le Vénézuéla ont cessé avant qu'elles eussent reçu satisfaction sur toutes leurs réclamations, et d'autre part, que la question du traitement préférentiel a été soumise à l'arbitrage, le tribunal doit reconnaître dans ces faits un témoignage précieux en faveur du grand principe de l'arbitrage dans toutes les phases des conflits internationaux;

Considérant que les puissances bloquantes, en admettant l'adhésion aux stipulations des protocoles du 13 février 1903 des autres Puissances ayant des réclamations à l'égard du Vénézuéla, ne pouvaient évidemment avoir l'intention de renoncer ni à leurs droits acquis, ni à leur position privilégiée de fait;

Considérant que le gouvernement du Vénézuéla dans les protocoles du 13 février (Article I) reconnaît lui-même "en principe le bien-fondé des réclamations," présentées contre lui par les gouvernements d'Allemagne, de Grande-Bretagne et d'Italie;

Tandis que dans les protocoles, signés entre le Vénézuéla et les puissances dites neutres ou pacifiques, le bien-fondé des réclamations de ces dernières n'a point été reconnu en principe;

Considérant que le gouvernement du Vénézuéla jusqu'à la fin de janvier 1903 ne protestait nullement contre la prétention des puissances bloquantes d'exiger des gages spéciaux pour le règlement de leurs réclamations;

Considérant que le Vénézuéla lui-même faisait toujours durant les négociations diplomatiques une distinction formelle entre "les puissances alliées" et "les puissances neutres ou pacifiques;"

Considérant que les puissances neutres, qui réclament actuellement devant le tribunal d'arbitrage l'égalité dans la répartition de 30 pour cent des recettes des douanes de La Guayra et de Puerto Cabello, n'ont pas protesté contre la prétention des puissances bloquantes à un traitement préférentiel, ni au moment de la cessation de la guerre contre le Vénézuéla, ni immédiatement après la signature des protocoles du 13 février 1903;

Considérant qu'il résulte des négociations diplomatiques, ayant abouti à la signature des protocoles du 13 février et 7 mai 1903, que les gouvernements Allemand et Britannique insistaient constamment sur ce qu'il leur soit donné des garanties pour "a sufficient and punctual discharge of the obligations" (Mémoire britannique du 23 décembre 1902, communiqué au gouvernement des Etats-Unis d'Amérique);

Considérant que le plénipotentiaire du gouvernement du Vénézuéla accepta ces réserves de la part des puissances alliées sans la moindre protestation;

Considérant que le gouvernement du Vénézuéla ne s'engagea, qu'à l'égard des puissances alliées, à offrir des garanties spéciales pour l'accomplissement des engagements pris par lui;

Considérant que la bonne foi qui doit régir les relations internationales impose le devoir de constater que les mots "all claims" employés par le représentant du Gouvernement du Vénézuéla dans ses pourparlers avec les représentants des puissances alliées (Statement left in the hands of Sir Michael H. Herbert by Mr. H. Bowen

of 23 January 1903), ne pouvaient viser que les réclamations de ces dernières et ne pouvaient se rapporter qu'à celles-ci;

Considérant que les puissances neutres, n'ayant pris aucune part aux opérations de guerre contre le Vénézuéla, pourraient sous quelque rapport profiter des circonstances créées par ces opérations, sans toutefois acquérir des droits nouveaux;

Considérant que les droits acquis des puissances neutres ou pacifiques à l'égard du Vénézuéla restent à l'avenir absolument intacts et garantis par des arrangements internationaux respectifs;

Considérant qu'en vertu de l'Article V des protocoles du 7 mai 1903, signés à Washington, le tribunal "décidera aussi, suivant la disposition générale, formulée par l'Article LVII de la convention internationale du 29 juillet 1899, comment, quand et par qui les frais du présent arbitrage seront payés."

Par ces motifs, le tribunal d'arbitrage décide et prononce à l'unanimité ce qui suit:

1. L'Allemagne, la Grande-Bretagne et l'Italie ont droit à un traitement préférentiel pour le paiement de leurs réclamations contre le Vénézuéla;

2. Le Vénézuéla ayant consenti à mettre de côté 30 pour cent du revenu des douanes de La Guayra et de Puerto Cabello pour le paiement des réclamations de toutes les nations contre le Vénézuéla, les trois puissances sus-mentionnées ont un droit de préférence au paiement de leurs réclamations au moyen de ces 30 pour cent des recettes des deux ports vénézuéliens sus-indiqués;

3. Chaque partie en litige supporte ses propres frais et une part égale des frais tribunal.

Le gouvernement des Etats-Unis d'Amérique est chargé de veiller à l'exécution de cette dernière dispositions dans le délai de trois mois.

Fait à la Haye, dans l'hôtel de la cour permanente d'arbitage, le 22 février 1904.

|         |                |
|---------|----------------|
| (Signé) | N. MOURAWIEFF. |
| (Signé) | H. LAMMASCH.   |
| (Signé) | MARTENS.       |

Le président prononce ensuite l'allocution suivante:

"Le tribunal d'arbitrage, institué par l'accord des puissances pour régler la principale question juridique, issue du différend vénézuélien, a terminé sa mission. Les copies officielles de la sentence qui vient d'être proclamée, seront délivrées dès aujourd'hui par les soins du secrétariat-général aux représentants des parties en litige. Dûment notifié, cette sentence, aux termes de l'article 1 des protocoles signés à Washington le 7 mai 1903, et de l'article 54 de la convention du 29 juillet 1899 est définitive et sans appel.

"La conscience des arbitres qui ont rendu la sentence, a été suffisamment éclairée par un examen approfondi de la cause, et ils se sont

prononcés, après mûre réflexion, en pleine impartialité et indépendance. Leur décision unanime, soigneusement motivée, est susceptible, comme chaque œuvre de l'homme, d'appréciations critiques, mais comme chose jugée, elle se trouve en dehors, sinon au-dessus des oppositions et des recours. La justice internationale a parlé—il n'y a qu'à s'incliner devant son arrêt.

“ Evidemment ce n'est ni le lieu, ni le moment de faire de la politique et nous n'en ferons pas, mais qu'il me soit permis de dire quelques mots encore avant de conclure cette belle manifestation de l'esprit conciliant des Etats, d'énoncer quelques considérations personnelles d'actualité récente, hélas, si défavorablement modifiée depuis notre première réunion dans ces murs hospitaliers. Nous avons commencé nos labeurs au milieu d'une situation plus ou moins paisible; nous achevons notre tâche au bruit sinistre des armes. Ainsi le veut la loi implacable de l'histoire, ou plutôt, l'imperfection flagrante des conditions, qui enserrant la nature humaine, trop souvent entravée dans sa marche pénible vers la lumière et le bien. On aspire à la paix de toutes les forces de son âme, on y travaille assidûment, avec conviction et ferveur, et, néanmoins, on n'est pas à l'abri d'une provocation hostile, d'une attaque inattendue. On veut sincèrement la conservation de la paix, et on est obligé d'accepter courageusement une guerre de légitime défense au nom de l'honneur et de la dignité de la patrie. Dans ce conflit douloureux du cœur et du devoir il reste une consolation suprême: la foi chaleureuse et absolue en la juste Providence des peuples et des batailles, qui saura distinguer entre le bon droit et les prétentions ambitieuses, entre la résolution tranquille, la fermeté inébranlable, et l'élan belliqueux, l'ardeur passionnée. Mais quand la tempête, mettant aux prises sanglantes du corps à corps les deux courants, européen et asiatique, aura enfin passé—tout passe ici-bas!—alors, nous y croyons religieusement, alors se dissiperont les nauges épais, qui ont assombri notre horizon, et renaître le calme réparateur, faisant briller avec plus d'éclat les bienfaits un instant méconnus du développement pacifique. L'arbitrage de La Haye, créé par la sagesse généreuse, demeure ce qu'il est—un rempart de la justice, de la vérité et de la raison, une espérance sublime d'un meilleur avenir. Je déclare la clôture de la présente dernière séance et la dislocation régulière du tribunal arbitral.”

La séance est levée à midi.

La Haye, le 22 février 1904.

N. MOURAWIEFF, *Président.*

L. H. RUYSSENAERS, *Secrétaire-Général.*

RÖELL,

GRANVILLE,

*Secrétaires.*

## AWARD OF THE TRIBUNAL OF ARBITRATION.

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The Tribunal of Arbitration, constituted in virtue of the protocols signed at Washington on May 7, 1903, between Germany, Great Britain, and Italy on the one hand and Venezuela on the other hand;

Whereas other protocols were signed to the same effect by Belgium, France, Mexico, the Netherlands, Spain, Sweden and Norway, and the United States of America on the one hand and Venezuela on the other hand;

Whereas all these protocols declare the agreement of all the contracting parties with reference to the settlement of the claims against the Venezuelan Government;

Whereas certain further questions, arising out of the action of the Governments of Germany, Great Britain, and Italy concerning the settlement of their claims, were not susceptible of solution by the ordinary diplomatic methods;

Whereas the powers interested decided to solve these questions by submitting them to arbitration, in conformity with the dispositions of the convention, signed at The Hague on July 29, 1899, for the pacific settlement of international disputes;

Whereas in virtue of Article III of the protocols of Washington of May 7, 1903, His Majesty the Emperor of Russia was requested by all the interested powers to name and appoint from among the members of the Permanent Court of Arbitration of The Hague three arbitrators, who shall form the Tribunal of Arbitration charged with the solution and settlement of the questions which shall be submitted to it in virtue of the above-named protocols;

Whereas none of the arbitrators thus named could be a citizen or subject of any one of the signatory or creditor powers, and whereas the tribunal was to meet at The Hague on September 1, 1903, and render its award within a term of six months;

His Majesty the Emperor of Russia, conforming to the request of all the signatory powers of the above-named protocols of Washington of May 7, 1903, graciously named as arbitrators the following members of the Permanent Court of Arbitration:

His Excellency Mr. N. V. Mourawieff, secretary of state of His Majesty the Emperor of Russia, actual privy councilor, minister of justice and procurator-general of the Russian Empire.



Mr. H. Lammasch, professor of criminal and of international law at the University of Vienna, member of the Upper House of the Austrian Parliament, and

His Excellency Mr. F. de Martens, doctor of law, privy councilor, permanent member of the council of the Russian ministry of foreign affairs, member of the "Institut de France;"

Whereas by unforeseen circumstances the Tribunal of Arbitration could not be definitely constituted till October 1, 1903, the arbitrators, at their first meeting on that day, proceeding in conformity with Article XXXIV of the convention of July 29, 1899, to the nomination of the president of the tribunal, elected as such His Excellency Mr. Mourawieff, minister of justice;

And whereas in virtue of the protocols of Washington of May 7, 1903, the above-named arbitrators, forming the legally constituted Tribunal of Arbitration, had to decide in conformity with Article I of the protocols of Washington of May 7, 1903, the following points:

The question as to whether or not Germany, Great Britain, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela, and its decision shall be final.

Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenue shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal, in that case, shall consider, in connection with the payment of the claims out of the 30 per cent, any preference or pledges of revenues enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution, so that no power shall obtain preferential treatment, and its decision shall be final.

Whereas the above-named arbitrators, having examined with impartiality and care all the documents and acts presented to the Tribunal of Arbitration by the agents of the powers interested in this litigation, and having listened with the greatest attention to the oral pleadings delivered before the tribunal by the agents and counsel of the parties to the litigation;

Whereas the tribunal, in its examination of the present litigation, had to be guided by the principles of international law and the maxims of justice;

Whereas the various protocols signed at Washington since February 13, 1903, and particularly the protocols of May 7, 1903, the obligatory force of which is beyond all doubt, form the legal basis for the arbitral award;

Whereas the tribunal has no competence at all either to contest the jurisdiction of the mixed commissions of arbitration established at Caracas nor to judge their action.

Whereas the tribunal considers itself absolutely incompetent to give a decision as to the character or the nature of the military operations undertaken by Germany, Great Britain, and Italy against Venezuela;

Whereas also the Tribunal of Arbitration was not called upon to decide whether the three blockading powers had exhausted all pacific methods in their dispute with Venezuela in order to prevent the employment of force;

And it can only state the fact that since 1901 the Government of Venezuela categorically refused to submit its dispute with Germany and Great Britain to arbitration, which was proposed several times and especially by the note of the German Government of July 16, 1901;

Whereas after the war between Germany, Great Britain, and Italy on the one hand and Venezuela on the other hand no formal treaty of peace was concluded between the belligerent powers;

Whereas the protocols, signed at Washington on February 13, 1903, had not settled all the questions in dispute between the belligerent parties, leaving open in particular the question of the distribution of the receipts of the customs of La Guaira and Puerto Cabello;

Whereas the belligerent powers in submitting the question of preferential treatment in the matter of these receipts to the judgment of the tribunal of arbitration agreed that the arbitral award should serve to fill up this void and to insure the definite reestablishment of peace between them;

Whereas, on the one hand, the warlike operations of the three great European powers against Venezuela ceased before they had received satisfaction on all their claims, and, on the other hand, the question of preferential treatment was submitted to arbitration, the tribunal must recognize in these facts precious evidence in favor of the great principle of arbitration in all phases of international disputes;

Whereas the blockading powers, in admitting the adherence to the stipulations of the protocols of February 13, 1903, of the other powers which had claims against Venezuela, could evidently not have the intention of renouncing either their acquired rights or their actual privileged position;

Whereas the Government of Venezuela in the protocols of February 13, 1903 (Article I), itself recognizes "in principle the justice of the claims" presented to it by the Governments of Germany, Great Britain, and Italy;

While in the protocol signed between Venezuela and the so-called neutral or pacific powers the justice of the claims of these latter was not recognized in principle;



Whereas the Government of Venezuela until the end of January, 1903, in no way protested against the pretensions of the blockading powers to insist on special securities for the settlement of their claims;

Whereas Venezuela itself during the diplomatic negotiations always made a formal distinction between "the allied powers" and "the neutral or pacific powers;"

Whereas the neutral powers, who now claim before the Tribunal of Arbitration equality in the distribution of the 30 per cent of the customs receipts of La Guaira and Puerto Cabello, did not protest against the pretensions of the blockading powers to a preferential treatment either at the moment of the cessation of the war against Venezuela or immediately after the signature of the protocols of February 13, 1903;

Whereas it appears from the negotiations which resulted in the signature of the protocols of February 13 and May 7, 1903, that the German and British Governments constantly insisted on their being given guarantees for "a sufficient and punctual discharge of the obligations" (British memorandum of December 23, 1902, communicated to the Government of the United States of America);

Whereas the plenipotentiary of the Government of Venezuela accepted this reservation on the part of the allied powers without the least protest;

Whereas the Government of Venezuela engaged, with respect to the allied powers alone, to offer special guarantees for the accomplishment of its engagements;

Whereas the good faith which ought to govern international relations imposes the duty of stating that the words "all claims" used by the representative of the Government of Venezuela in his conferences with the representatives of the allied powers (statement left in the hands of Sir Michael Herbert by Mr. H. Bowen of January 23, 1903) could only mean the claims of these latter and could only refer to them;

Whereas the neutral powers, having taken no part in the warlike operations against Venezuela, could in some respects profit by the circumstances created by those operations, but without acquiring any new rights;

Whereas the rights acquired by the neutral or pacific powers with regard to Venezuela remain in the future absolutely intact and guaranteed by respective international arrangements;

Whereas in virtue of Article V of the protocols of May 7, 1903, signed at Washington, the tribunal "shall also decide, subject to the general provisions laid down in Article LVII of the international convention of July 29, 1899, how, when, and by whom the costs of this arbitration shall be paid;"

For these reasons, the Tribunal of Arbitration decides and pronounces unanimously that:

(1) Germany, Great Britain, and Italy have a right to preferential treatment for the payment of their claims against Venezuela;

(2) Venezuela having consented to put aside 30 per cent of the revenues of the customs of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the three above-named powers have a right to preference in the payment of their claims by means of these 30 per cent of the receipts of the two Venezuelan ports above mentioned;

(3) Each party to the litigation shall bear its own costs and an equal share of the costs of the tribunal.

The Government of the United States of America is charged with seeing to the execution of this latter clause within a term of three months.

Done at The Hague, in the Permanent Court of Arbitration, February 22, 1904.

(Signed)

(Signed)

(Signed)

N. MOURAWIEFF.

H. LAMMASCH.

MARTENS.

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[French text.]

Le tribunal d'arbitrage, constitué en vertu des protocoles, signés à Washington, le 7 mai 1903, entre l'Allemagne, la Grande-Bretagne et l'Italie d'une part, et el Vénézuéla d'autre part;

Considérant que d'autres protocoles ont été signés à cet effet entre la Belgique, l'Espagne, les Etats-Unis d'Amérique, la France, le Mexique, les Pays-Bas, le Suède et Norvège d'une part, et le Vénézuéla d'autre part;

Considérant que tous ces actes constatent l'accord de toutes les parties contractantes relativement au règlement des réclamations contre le gouvernement Vénézuélien;

Considérant que diverses autres questions, résultant de l'action des gouvernements d'Allemagne, de Grande-Bretagne et d'Italie concernant le règlement des réclamations, n'étaient pas susceptibles d'une solution par la voie diplomatique ordinaire;

Considérant que les puissances intéressées ont décidé de résoudre ces questions en les soumettant à l'arbitrage, conformément aux dispositions de la convention, signée à La Haye le 29 juillet 1899, pour le règlement pacifique des conflits internationaux;

Considérant qu'en vertu de l'Article III des protocoles de Washington du 7 mai 1903, Sa Majesté l'Empereur de Russie a été invité par toutes les puissances intéressées à désigner parmi les membres de

la cour permanente d'arbitrage de La Haye trois arbitres, qui formeront le tribunal d'arbitrage chargé de résoudre et de régler les questions qui lui seront soumises en vertu des protocoles sus-mentionnés;

Attendu qu'aucun des arbitres ainsi désignés ne pourrait être citoyen ou sujet de l'une quelconque des puissances signataires ou créancières, et que le tribunal devrait se réunir à La Haye le 1<sup>er</sup> septembre 1903 et rendre sa sentence dans le délai de six mois;

Sa Majesté l'Empereur de Russie, en se rendant au désir de toutes les puissances signataires des protocoles sus-mentionnés de Washington du 7 mai 1903, a daigné nommer comme arbitres les membres suivants de la cour permanente d'arbitrage à La Haye:

Son Excellence Monsieur N. V. Mourawieff, secrétaire d'état de Sa Majesté l'Empereur de Russie, conseiller privé actuel, ministre de la justice et procureur-général de l'Empire de Russie;

Monsieur H. Lammasch, professeur de droit pénal et de droit international à l'Université de Vienne, membre de la chambre des seigneurs du parlement autrichien, et

Son excellence Monsieur F. de Martens, docteur en droit, conseiller privé, membre permanent du conseil du ministère des affaires étrangères de Russie, membre de l'Institut de France.

Attendu que par des circonstances imprévues le tribunal d'arbitrage ne put être constitué définitivement que le 1<sup>er</sup> octobre 1903, les arbitres, dans leur première réunion du même jour, en procédant conformément à l'Article XXXIV de la convention du 29 juillet 1899, à la nomination du président du tribunal, ont élu comme tel Son Excellence Monsieur Mourawieff, ministre de la justice;

Et attendu qu'en vertu des protocoles de Washington du 7 mai 1903, les susmentionnés arbitres, réunis en tribunal d'arbitrage, légalement constitué, devaient décider, conformément à l'Article I des protocoles de Washington du 7 mai 1903, ce qui suit:

La question de savoir, si l'Allemagne, la Grande-Bretagne, et l'Italie ont, ou n'ont pas, droit à un traitement préférentiel ou séparé pour le paiement de leurs réclamations contre le Vénézuéla et la trancher sans appel;

Le Vénézuéla ayant consenti à mettre de côté 30 pour cent du revenu des douanes de La Guayra et de Puerto Cabello pour le paiement des réclamations de toutes les nations contre le Vénézuéla, le tribunal de La Haye décidera comment ces recettes seront réparties entre les puissances qui ont effectué le blocus d'une part, et les autres puissances créancières d'autre part, et sa décision sera sans appel.

Si un traitement préférentiel ou séparé n'est pas accordé aux puissances bloquantes, le tribunal décidera comment les susdits revenus seront répartis entre toutes les puissances créancières; et les parties conviennent que, dans ce cas le tribunal prendra en considération, par rapport aux paiements à effectuer au moyen de 30 pour cent tout droit de préférence ou de gage sur les revenus dont serait titulaire l'une quelconque des puissances créancières, et le tribunal tranchera en conséquence la question de répartition de façon qu'aucune puissance ne jouisse d'un traitement préférentiel, et sa décision sera sans appel.

Attendu que les susmentionnés arbitres, ayant examiné avec impartialité et soin tous les documents et actes, présentés au tribunal d'arbitrage par les agents des puissances intéressées dans ce litige, et ayant entendu avec la plus grande attention les plaidoiries orales, prononcées devant le tribunal, par les agents et conseils des parties en litige;

Considérant que le tribunal, en examinant le présent litige devait se régler d'après les principes du droit international et les notions de la justice;

Considérant que les différents protocoles signés à Washington depuis le 13 février 1903, et particulièrement les protocoles du 7 mai 1903, dont la force obligatoire ne saurait être mise en doute, forment la base légale de la sentence arbitrale;

Considérant que le tribunal d'arbitrage n'est nullement compétent ni pour contester la juridiction des commissions mixtes arbitrales, établies à Caracas, ni pour juger leur action;

Considérant que le tribunal ne se reconnaît absolument aucune compétence pour porter un jugement sur le caractère ou la nature des opérations militaires entreprises par l'Allemagne, la Grande-Bretagne et l'Italie contre le Vénézuéla;

Considérant que le tribunal d'arbitrage n'était non plus appelé à décider si les trois puissances bloquantes avaient épuisé dans leur conflit avec le Vénézuéla tous les moyens pacifiques, afin de prévenir l'emploi de la force;

Qu'il peut seulement constater le fait que depuis 1901 le gouvernement du Vénézuéla refusait catégoriquement de soumettre son conflit avec l'Allemagne et la Grande-Bretagne à l'arbitrage, proposé à plusieurs reprises et tout spécialement par la note du gouvernement allemand du 16 juillet 1901;

Considérant qu'après la guerre entre l'Allemagne, la Grande-Bretagne et l'Italie d'une part, et le Vénézuéla d'autre part, aucun traité formel de paix ne fut conclu entre les puissances belligérantes;

Considérant que les protocoles, signés à Washington le 13 février 1903, n'avaient point réglé toutes les questions en litige entre les parties belligérantes, en laissant particulièrement ouverte la question de la répartition des recettes des douanes de La Guayra et de Puerto Cabello;

Considérant que les puissances belligérantes, en soumettant la question du traitement préférentiel par rapport à ces recettes au jugement du tribunal d'arbitrage, sont tombées d'accord que la sentence arbitrale doit servir à compléter cette lacune et à assurer le rétablissement définitif de la paix entre elles;

Considérant d'une part que les opérations de guerre des trois grandes puissances européennes contre le Vénézuéla ont cessé avant

qu'elles eussent reçu satisfaction sur toutes leurs réclamations, et d'autre part, que la question du traitement préférentiel a été soumise à l'arbitrage, le tribunal doit reconnaître dans ces faits un témoignage précieux en faveur du grand principe de l'arbitrage dans toutes les phases des conflits internationaux;

Considérant que les puissances bloquantes, en admettant l'adhésion aux stipulations des protocoles du 13 février 1903 des autres puissances ayant des réclamations à l'égard du Vénézuéla, ne pouvaient évidemment avoir l'intention de renoncer ni à leurs droits acquis, ni à leur position privilégiée de fait;

Considérant que le gouvernement du Vénézuéla dans les protocoles du 13 février (Article I) reconnaît lui-même "en principe le bien-fondé des réclamations," présentées contre lui par les gouvernements d'Allemagne, de Grande-Bretagne et d'Italie;

Tandis que dans les protocoles, signés entre le Vénézuéla et les puissances dites neutres ou pacifiques, le bien-fondé des réclamations de ces dernières n'a point été reconnu en principe;

Considérant que le gouvernement du Vénézuéla jusqu'à la fin de janvier 1903 ne protestait nullement contre la prétention des puissances bloquantes d'exiger des gages spéciaux pour le règlement de leurs réclamations;

Considérant que le Vénézuéla lui-même faisait toujours durant les négociations diplomatiques une distinction formelle entre "les puissances alliées" et "les puissances neutres ou pacifiques;"

Considérant que les puissances neutres, qui réclament actuellement devant le tribunal d'arbitrage l'égalité dans la répartition de 30 pour cent des recettes des douanes de La Guayra et de Puerto Cabello, n'ont pas protesté contre la prétention des puissances bloquantes à un traitement préférentiel, ni au moment de la cessation de la guerre contre le Vénézuéla, ni immédiatement après la signature des protocoles du 13 février 1903;

Considérant qu'il résulte des négociations diplomatiques, ayant abouti à la signature des protocoles du 13 février et 7 mai 1903, que les gouvernements allemand et britannique insistaient constamment sur ce qu'il leur soit donné des garanties pour "a sufficient and punctual discharge of the obligations" (Mémoire britannique du 23 décembre 1902, communiqué au gouvernement des Etats-Unis d'Amérique);

Considérant que le plénipotentiaire du gouvernement du Vénézuéla accepta ces réserves de la part des puissances alliées sans la moindre protestation;

Considérant que le gouvernement du Vénézuéla ne s'engagea, qu'à l'égard des puissances alliées, à offrir des garanties spéciales pour l'accomplissement des engagements pris par lui;

Considérant que la bonne foi qui doit régir les relations internationales impose le devoir de constater que les mots "all claims" employés par le représentant du gouvernement du Vénézuéla dans ses pourparlers avec les représentants des puissances alliées (statement left in the hands of Sir Michael H. Herbert by Mr. H. Bowen of 23 January 1903), ne pouvaient viser que les réclamations de ces dernières et ne pouvaient se rapporter qu'à celles-ci;

Considérant que les puissances neutres, n'ayant pris aucune part aux opérations de guerre contre le Vénézuéla, pourraient sous quelque rapport profiter des circonstances créées par ces opérations, sans toutefois acquérir des droits nouveaux;

Considérant que les droits acquis des puissances neutres ou pacifiques à l'égard du Vénézuéla restent à l'avenir absolument intacts et garantis par des arrangements internationaux respectifs;

Considérant qu'en vertu de l'Article V des protocoles du 7 mai 1903, signés à Washington, le tribunal "décidera aussi suivant la disposition générale, formulée par l'Article LVII de la convention internationale du 29 juillet 1899, comment, quand et par qui les frais du présent arbitrage seront payés; "

Par ces motifs: Le tribunal d'arbitrage décide et prononce à l'unanimité ce qui suit:

(1) L'Allemagne, la Grande Bretagne et l'Italie ont droit à un traitement préférentiel pour le paiement de leurs réclamations contre le Vénézuéla;

(2) Le Vénézuéla ayant consenti à mettre de côté 30 pour cent du revenu des douanes de La Guayra et de Puerto Cabello pour le paiement des réclamations de toutes les nations contre le Vénézuéla, les trois puissances susmentionnées ont un droit de préférence au paiement de leurs réclamations au moyen de ces 30 pour cent des recettes des deux ports vénézuéliens sus-indiqués;

(3) Chaque partie en litige supporte ses propres frais et une part égale des frais du tribunal.

Le gouvernement des Etats-Unis d'Amérique est chargé de veiller à l'exécution de cette dernière disposition dans le délai de trois mois.

Fait à la Haye, dans l'Hôtel de la Cour Permanente d'Arbitrage, le 22 février 1904.

(Signé)

(Signé)

(Signé)

N. MOURAWIEFF.

H. LAMMASCH.

MARTENS.

## ANNEX I.

I. A note from the Netherlands minister of foreign affairs of August 12, 1903, bureau of the protocol, No. 10178, transmitting certified copies:

(a) Of the protocols signed at Washington May 7, 1903, and of the adhesion



to the said protocols on June 13, 1903, in the name of his Government, by the Netherlands minister at Washington ;

(b) Of the protocol signed at Washington February 28, 1903, between Venezuela and the Netherlands for the submission to a mixed commission of all claims of the Government of the Netherlands or of Dutch subjects against Venezuela.

II. A note from the American minister of August 19, 1903, No. 48, notifying the names of the three members of the Tribunal.

III. A note from the American minister of August 24, 1903, No. 49, stating that he would soon send certified copies of the protocols signed at Washington May 7, 1903, on behalf of Venezuela, and requesting, in the name of Venezuela, that the necessary measures be taken for the meeting of the tribunal.

IV. A note from the Belgian minister of August 27, 1903, No. 1366, notifying :

(a) The adhesion of Belgium to the protocols signed at Washington May 7, 1903 ;

(b) The acceptance of the arbitrators named by the Emperor of Russia ;

(c) The appointment of Mr. Woeste, advocate at the supreme court at Brussels, minister of state, as counsel of the Belgian Government before the arbitral tribunal.

V. A note from the British minister of August 29, 1903, transmitting certified copies :

(a) Of the protocol signed at Washington February 13, 1903, between Great Britain and Venezuela relative to the regulation of British claims against Venezuela and other matters ;

(b) Of the protocol signed at Washington May 7, 1903, between Great Britain and Venezuela submitting to a mixed commission all British claims against Venezuela other than those regulated by the said protocol of February 13, 1903, and

(c) Of the protocol signed at Washington May 7, 1903, between Great Britain and Venezuela referring to an arbitral tribunal the regulation of the distribution among the different States, creditors of Venezuela, of the customs revenues put aside to this end.

VI. A note from the British minister of August 29, 1903, notifying the nomination of Mr. Arthur Larcom, of the foreign office, as agent, and of Sir Robert B. Finlay, K. C., M. P., attorney-general, of Mr. Arthur Cohen, K. C., and of Mr. H. Erle Richards, barrister-at-law, as counsel of the British Government before the arbitral tribunal.

VII. A note from the Italian minister of August 29, 1903, transmitting a certified copy of the protocol signed at Washington May 7, 1903, between Italy and Venezuela.

VIII. A note from the Italian minister of August 29, 1903, notifying the nomination of Commendatore Augusto Pierantoni, senator, professor of international law at the University of Rome, as legal adviser, and of Count A. de Bosdari, first secretary of the Italian legation at The Hague, as agent before the arbitral tribunal.

IX. A note from the German minister of August 29, 1903, No. 3224, transmitting certified copies—

(a) Of the protocol signed at Washington February 13, 1903, between Germany and Venezuela relative to the regulation of the German claims against Venezuela ;

(b) Of the protocol signed at Washington May 7, 1903, between Germany and Venezuela submitting to a mixed commission all German claims against Venezuela ;

(c) Of the protocol signed at Washington May 7, 1903, between Germany and Venezuela for the reference to an arbitral tribunal of the regulation of the dis-

tribution between the different States, creditors of Venezuela, of the customs revenues put aside to this end.

X. A note from the French minister of August 29, 1903, notifying the nomination of Mr. Louis Renault, minister plenipotentiary, professor of law at the University of Paris, counselor in the ministry of foreign affairs, member of the Permanent Court of Arbitration, as agent, and of Mr. Clunet, advocate at the court of appeal at Paris, member and former vice-president of the Institute of International Law, as counsel of the French Government before the arbitral tribunal, and of Mr. Fromageot, advocate at the court of appeal at Paris, as secretary of the French delegation.

XI. A note from the Spanish minister of August 29, 1903, notifying the nomination of the Marquis de Villasinda as delegate of the Spanish Government before the arbitral tribunal.

XII. A note from the minister of Sweden and Norway of August 31, 1903, transmitting a certified copy of the declaration by which the United Kingdoms have adhered to the protocols signed at Washington May 7, 1903.

XIII. A note from the Netherlands minister of foreign affairs of August 31, 1903, No. 10934, notifying the nomination of Mr. de Weckherlin, envoy extraordinary and minister plenipotentiary of Her Majesty the Queen of the Netherlands, as agent before the arbitral tribunal.

XIV. A note from the minister of Sweden and Norway of August 31, 1903, notifying the nomination of Mr. de Weckherlin, envoy extraordinary and minister plenipotentiary of Her Majesty the Queen of the Netherlands, as agent of the Government of Sweden and Norway before the arbitral tribunal.

XV. A note from the president of the administrative council of August 31, 1903, cabinet of the minister No. 1, transmitting a note of the Russian minister of August 17/30, 1903, No. 330, and charging the secretary-general of the Permanent Court of Arbitration to inform the members of the administrative council of the court—in transmitting a copy of his Excellency Mr. de Struve's note—that the first meeting would take place on September 1, at 3 p. m.

XVI. A note from the German minister of August 31, 1903, No. 3371, stating that Mr. Lardy and Professor Matzen had declined to act as arbitrators in view of the fact that Switzerland and Denmark, as creditor States, must be considered as powers in the meaning of article 3 of the protocol, and notifying the nomination of Mr. Blinz, German consul-general at New York, as delegate, and, awaiting his arrival, of Mr. von Broilius, counselor of the German legation at The Hague, as delegate ad interim, and of Doctor Zorn, "Geheimer Justizrath," professor of law at the University of Bonn, as jurisconsul before the arbitral tribunal.

XVII. A note from the American minister of September 1, 1903, No. 52, notifying the nomination of Messrs. Wayne MacVeagh, Herbert W. Bowen, and W. L. Penfield, as counsel before the arbitral tribunal and of Messrs. Charles Ray Dean and Walter Scott Penfield as secretaries attached to the American delegation.

XVIII. A note from the American minister of September 1, 1903, No. 53, notifying the nomination of Messrs. Wayne MacVeagh, Herbert W. Bowen, and W. L. Penfield as counsel of the Venezuelan Government before the arbitral tribunal and of Messrs. Charles Ray Dean and Walter Scott Penfield as secretaries attached to the Venezuelan delegation.

XIX. A telegram from the Mexican minister, dated September 1, 1903, notifying that the Mexican States consent to the preliminary meeting being held before a single arbitrator, provided all the other interested powers consent thereto.



**XX.** A note from Messrs. Wayne MacVeagh, Herbert W. Bowen, and W. L. Penfield, counsel for Venezuela, of September 1, 1903, protesting against the delay that has occurred on account of the failure to select the arbitrators in time and declaring that the representatives of Venezuela are now ready to take part in the arbitration, and expressing the opinion that since the tribunal, according to the terms of the protocol signed at Washington, May 7, 1903, must be composed of three members, a less number of arbitrators would not be able to arrive at any decision.

**XXI.** A note from the French minister of September 1, 1903, notifying the adhesion of France to the protocols signed at Washington May 7, 1903, with the reservation (1) that Article IV of the said protocols should put no obstacle in the way of the application of the provisions of article 38 of the International Convention by the terms of which it is the arbitral tribunal that "decides the choice of languages of which it shall make use and the use of which shall be authorized before it," and (2) that Venezuela renounce the stipulations of Article IV.

**XXII.** A note from the American minister of September 2, 1903, No. 54, transmitting copies of the protocols signed at Washington May 7, 1903, certified to by the secretary of the Venezuelan legation at Washington.

**XXIII.** A note from the Mexican minister of September 1, 1903, No. 38, confirming his telegram of September 1, 1903, relating to the preliminary meeting in connection with the Venezuelan affair (see No. XIX).

**XXIV.** A note from the German delegate, dated September 2, 1903, protesting, in the name of his Government, against the assertion of the Venezuelan counsel in their note of September 1, 1903, concerning the delay in connection with the choice of arbitrators (see No. XX).

**XXV.** A note from the British agent, dated September 2, 1903, protesting, in the name of his Government, against the assertion of the Venezuelan counsel in their note of September 1, 1903, concerning the delay in connection with the choice of arbitrators (see No. XX).

**XXVI.** A note from the French minister of September 3, 1903, inclosing a copy of the note in which the representative of Venezuela in France informed the minister of foreign affairs that the Venezuelan Government made no further objection to the reservations made by the Government of the French Republic to article IV of the protocol signed at Washington May 7, 1903.

**XXVII.** A note from the counsel of Venezuela of September 3, 1903, requesting that copies be sent them of notes and documents received at the bureau of the Permanent Court of Arbitration from the representatives of the powers non-signatory to the protocols of Washington of May 7, 1903.

**XXVIII.** A note from the counsel of Venezuela of September 4, 1903, protesting against the secretary-general's answer of September 3, that he reserved the right to respond later on to the question asked in their note of September 3 concerning the sending of copies of documents.

**XXIX.** A note from the counsel of Venezuela of September 3, 1903, addressed to the members of the administrative council, containing some observations on the subject of the constitution of the tribunal, the procedure of the arbitration, etc.

**XXX.** A note from the American minister of September 10, 1903, No. 59, transmitting a copy of the protocol signed at Washington February 17, 1903, between the United States of America and Venezuela submitting to arbitration all the unliquidated American claims against Venezuela, as well as on behalf of the Venezuelan Government, a copy certified to by the Venezuelan minister of foreign affairs.

XXXI. A note from the Italian minister of September 19, 1903, No. 332, transmitting certified copies of the protocol signed at Washington February 13, 1903, between Italy and Venezuela concerning the Italian claims against Venezuela, and that of May 7, 1903, relating to the formation of a mixed commission charged with the examination of the above-mentioned claims.

XXXII. Correspondence between the Venezuelan delegation and the International Bureau of the Permanent Court of Arbitration on the subject of the communication of all acts and documents deposited at the Bureau:

(a) A note from the counsel for Venezuela of September 3, 1903 (see No. XXVII);

(b) A note from the secretary-general of the Permanent Court of Arbitration of September 3, 1903, No. 43, C;

(c) A note from the counsel for Venezuela of September 4, 1903 (see No. XXVIII);

(d) A note from the secretary-general of the court of September 5, 1903, No. 53, C;

(e) A note from the secretary-general of the court of September 10, 1903, No. 62, C;

(f) A note from Mr. Wayne MacVeagh, counsel for Venezuela of September 16, 1903, addressed to the administrative council of the court.

XXXIII. A note from the Netherlands minister foreign affairs of September 24, 1903, No. 11747, notifying the appointment of Mr. C. Crommelin, attaché at the ministry of foreign affairs, to act as secretary to the delegate of the Netherlands Government.

XXXIV. A note from the German chargé d'affaires of September 26, 1903, No. 3698, concerning the titles and qualities of the members of the German delegation and notifying the appointment of Doctor Saelmans, attaché at the ministry of foreign affairs, as secretary to the German delegation.

XXXV. A note from the counsel of Venezuela of September 29, 1903, transmitting three sealed envelopes with the request that they be delivered as soon as possible to the members of the arbitral tribunal.

XXXVI. A note from the Russian minister of September 29, 1903, announcing the nomination by His Majesty the Emperor of Russia, as members of the tribunal, of His Excellency Mr. de Mourawieff, Prof. H. Lammasch, and His Excellency Mr. de Martens.

XXXVII. A note from the Spanish minister of September 29, 1903, transmitting—

(a) A certified copy of the protocol signed at Washington April 2, 1903, between Spain and Venezuela to submit to a mixed commission all unsettled claims of Spanish subjects against Venezuela;

(b) A certified copy of a note addressed by the Spanish minister under date of September 29, 1903, to the counsel of Venezuela asking whether they agree with the interpretation given by him in this note of the terms of the first paragraph of Article IV of the protocols of May 7, 1903, between Venezuela on the one part and Germany, Great Britain, and Italy on the other; and

(c) A certified copy of a note from the counsel of Venezuela dated September 20, 1903, informing the Spanish minister that they do agree with the interpretation given in his above-mentioned note of the terms of the first paragraph of Article IV of the said protocols of May 7, 1903.

XXXVIII. A note from the British minister of September 30, 1903, announcing the nomination by His Majesty the Emperor of Russia, in the place of Messrs. Matzen and Lardy, who had excused themselves, of His Excellency Mr. de Martens and of Prof. H. Lammasch.

XXXIX. A note from the German chargé d'affaires of September 30, 1903, No. 3746, announcing that His Majesty the Emperor of Russia had nominated as members of the tribunal Prof. H. Laminasch and His Excellency Mr. de Martens, in the place of Messrs. Lardy and Matzen, who had excused themselves on the ground that Switzerland and Denmark must be considered as powers in the meaning of article 3 of the Washington protocol.

XL. A note from the British minister of September 30, 1903, protesting, in the name of his Government, against the appointment of Mr. Renault as counsel before the tribunal on account of his position as a member of the Permanent Court of Arbitration.

XLI. A note from the counsel of Venezuela of September 30, 1903, asking leave to inform the arbitral tribunal of their wishes as to the pleadings.

XLII. A note from the Belgian minister of September 24, 1903, notifying that the Belgian minister at Washington had adhered on the 12th of June to the protocols of May 7, 1903.

XLIII. A telegram from the under secretary of state of the Mexican department of foreign affairs of October 1, 1903, notifying that Mr. Pardo, Mexican minister at The Hague, would represent Mexican interests before the tribunal.

XLIV. A note from Mr. Herbert W. Bowen, counsel for Venezuela, of October 1, 1903, transmitting copies and translations of two telegrams from President Castro of the 8th of September last concerning the reservations made by France on the subject of languages and the undue intervention of General Velutini in this question.

XLV. A note from the counsel of Venezuela of October 3, 1903, transmitting three copies of the English Blue Book concerning the Venezuelan affair, as well as three copies of the protocol of February 17, 1903, for presentation to the members of the tribunal.

XLVI. A note from the counsel of the United States of America of October 3, 1903, on the subject of the adhesion of the Government of the United States of America to the note sent by Venezuela (preliminary examination of the question on behalf of Venezuela), with the request that the tribunal may be informed of this note and that copies thereof be handed to the representatives of the powers.

XLVII. A note from the American minister of October 10, 1903, No. 60, requesting to change the designation of Mr. W. L. Penfield to read, Agent of the Government of the United States of America.

XLVIII. A note from the agent of the United States of America of October 13, 1903, transmitting copies of the case for the United States.

XLIX. A note from the Belgian minister of October 15, 1903, No. 1622, transmitting certified copies of the protocols of Washington of May 7, 1903.

L. A note from the Spanish minister of October 14, 1903, transmitting a certificate of the adhesion of Spain to the protocols of Washington of May 7, 1903, on October 1, 1903.

LI. A note from the secretary to the agent of the Government of the Netherlands of October 16, 1903, transmitting copies of the petition of the agent of the Netherlands and of the petition of the agent of Sweden and Norway.

LII. A note from the Belgian minister of October 16, 1903, No. 1632, transmitting a note from Mr. Woeste, minister of state, counsel for the Government of Belgium, with the "conclusions submitted by Belgium to the Court of Arbitration of The Hague," the "statement of facts concerning the claim of the Caracas Water Supply Company," and an appendix to these "conclusions."

LIII. A note from the agent for Germany of October 15, 1903, transmitting copies of the case of the German Government.

LIV. A note from the British minister of October 18, 1903, transmitting copies of the case of the British Government.

LV. A note from the Spanish minister of October 18, 1903, transmitting copies of the case of the Spanish Government.

LVI. A note from the agent for Italy of October 18, 1903, transmitting copies of the case of the Italian Government.

LVII. A note from the secretary of the French delegation of October 18, 1903, transmitting copies of the case of the French Government.

LVIII. A note from the Mexican minister of October 22, 1903, No. 40, stating that he had not appeared before the tribunal nor taken any steps to have himself recognized as the agent or counsel of his Government.

LIX. A note from the British agent of October 26, 1903, submitting a memorandum about the order of procedure.

LX. A note from the British agent of October 27, 1903, requesting that the originals or certified copies of some documents alluded to in the conclusions submitted by Belgium and in the case of the Spanish Government may be produced.

LXI. A note from the secretary of the Belgian legation of October 28, 1903, transmitting a note from Mr. Woeste, counsel for Belgium, accompanied by copies of the conclusions that he had prepared in answer to the British, German, and Italian cases.

LXII. A note from the counsel for Belgium of October 30, 1903, stating that the memorandum that has been filed at the bureau contains the documents alluded to by the agent for Great Britain.

LXIII. A telegram from the Spanish delegate of October 30, 1903, stating that he will forward the documents asked for by the British agent.

LXIV. A note from the secretary of the Belgian legation of November 1, 1903, transmitting a note from the Belgian counsel with the originals of some documents, copies of which are to be found in his memorandum, and which are open to examination by all the representatives of the parties.

LXV. A note from the secretary of the French delegation of November 2, 1903, transmitting copies of the counter case of the French Government.

LXVI. A note from the German agent of November 2, 1903, transmitting copies of the counter case of the German Government.

LXVII. A note from the secretary of the Belgian legation of November 1, 1903, transmitting copies of the protocol signed at Washington March 7, 1903, between Belgium and Venezuela for the adjustment of the claims against Venezuela and for their submission to a mixed commission.

LXVIII. A note from the British agent of November 2, 1903, transmitting copies of the counter case of the British Government.

LXIX. A note from the Italian agent of November 2, 1903, transmitting copies of the counter case of the Italian Government.

LXX. A note from the British agent of November 2, 1903, transmitting a supplement to the British counter case, together with certified copies of the documents submitted in proof.

LXXI. A note from the secretary of the Netherlands agent of November 2, 1903, transmitting copies of the counter case of the Netherlands and of Sweden and Norway.

LXXII. A note from the Spanish minister of November 2, 1903, transmitting copies of the protocol signed at Washington April 2, 1903, between Spain and Venezuela relative to the adjustment of Spanish claims against Venezuela.

LXXIII. A note from the Spanish minister of November 2, 1903, transmitting copies of the counter case of the Spanish Government.

LXXIV. A note from the Spanish delegate of November 2, 1903, transmitting certified copies of the notes of Mr. Baralt of November 16 and 19, 1902, requested by the British agent.

LXXV. A note from the minister of Mexico at The Hague and at Brussels of October 31, 1903, notifying his appointment as agent for Mexico before the tribunal.

LXXVI. A note from the Mexican minister of October 31, 1903, notifying, on behalf of his Government, the adhesion of Mexico to the memorandum and case submitted by the agent of the United States of America.

LXXVII. A note from the Mexican minister of October 31, 1903, transmitting copies of the protocol signed at Washington, February 23, 1903, between his Government and Venezuela, for the adjustment of the claims against Venezuela that have been submitted to a mixed commission.

LXXVIII. A note from the German agent of November 2, 1903, transmitting a memorandum concerning the order of procedure.

LXXIX. A note from the American agent of November 3, 1903, transmitting a memorandum concerning the order of procedure.

LXXX. A note from the French chargé d'affaires of November 3, 1903, concerning the note of the British minister of September 30, 1903, protesting against the appointment of a member of the permanent court as counsel before the tribunal.

LXXXI. A note from the counsel for Venezuela of November 3, 1903, transmitting the Venezuelan counter case and the Venezuelan reply to the British memorandum concerning the order of procedure.

LXXXII. A note from the Spanish delegate of November 4, 1903, announcing the appointment of Mr. Clunet to assist him at the meetings as counsel.

LXXXIII. A telegram from Mr. Pardo, Mexican agent, of November 3, 1903, excusing himself for his inability, owing to illness, to attend for the present the meetings of the tribunal.

LXXXIV. A declaration from the agent for the Netherlands of November 4, 1903, concerning the request of one of the parties that each of the parties should submit a list of its own claims which are already guaranteed and of such claims as are to share in the distribution of the 30 per cent of the custom-house revenues.

LXXXV. Copy of a note of April 14, 1894, giving a "Projet d'une action collective contre le Vénézuéla, rédigé par les représentants d'Allemagne, Belgique, Espagne et France à Caracas" (deposited with the tribunal by Mr. Pierantoni, counsel for Italy, November 4, 1903).

LXXXVI. A note from the Mexican minister of October 28, 1903, No. 41, stating that he had no knowledge of the notification addressed October 1, 1903, by Mr. J. Algara, under secretary for foreign affairs at Mexico, to the president of the tribunal, of his designation as agent before the tribunal.

LXXXVII. A note from the counsel for Venezuela of November 9, 1903, notifying the nomination of Mr. José de J. Paul counsel for Venezuela before the arbitral tribunal.

LXXXVIII. Copy of a statement of Mr. Bowen that had been read by Mr. Penfield in his argument of November 9, 1903. (See Protocol IX.)

LXXXIX. List of the indemnities awarded by the mixed commission instituted under the German Venezuelan protocol of February 13, 1903.

XC. Résumé of the conclusions of the counsel for Italy.

XCI. Figures of the blockade expenses incurred by Italy.

XCII. A note from the Italian agent of November 12, 1903, giving an account of the present state of the labors of the mixed commission.

XOIII. Protocol between France and Venezuela of February 19, 1902.

XCIV. A note from the legation of Sweden and Norway of November 11, 1903, transmitting copies of the protocol signed at Washington March 10, 1903, for the adjustments of their claims against Venezuela.

XCV. A note from the British agent of December 12, 1903, transmitting copies of the list of British indemnities awarded by the mixed commission.

XCVI. A note from the German minister of December 12, 1903, transmitting copies of the list of German indemnities awarded by the mixed commission.

XCVII. A note from the Netherlands agent of December 12, 1903, transmitting copies of the list of Netherlands indemnities awarded by the mixed commission.

XCVIII. A note from the agent for Sweden and Norway of December 12, 1903, transmitting copies of the list of Swedish and Norwegian indemnities awarded by the mixed commission.

XCIX. A note from the Spanish minister of December 14, 1903, transmitting copies of the list of Spanish indemnities awarded by the mixed commission.

C. A note from the chargé d'affaires of the United States of December 14, 1903, transmitting copies of the list of American indemnities awarded by the mixed commission.

CI. A note from the Italian agent of December 15, 1903, transmitting copies of the list of Italian indemnities awarded by the mixed commission.

CII. A note from the German minister of February 1, 1904, notifying that he will represent his Government at the meeting of the tribunal in which the award will be pronounced.

CIII. A note from the American minister of February 2, 1904, notifying that he will represent his Government at the meeting of the tribunal in which the award will be pronounced.

CIV. A note from the Italian minister of February 18, 1904, notifying that he will represent his Government at the meeting of the tribunal in which the award will be pronounced.

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[French text.]

I. Une lettre du ministre des affaires étrangères des Pays-Bas du 12 août 1903, direction du protocole No. 10178, transmettant des copies certifiées conformes :

(a) Des protocoles signés à Washington le 7 mai 1903 et de l'adhésion donnée aux dits protocoles le 13 juin 1903, au nom de son gouvernement, par le ministre des Pays-Bas à Washington ;

(b) Du protocole signé à Washington le 28 février 1903, entre le Vénézuéla et les Pays-Bas pour soumettre à une commission mixte toutes les réclamations que le gouvernement et les sujets néerlandais ont à faire valoir contre Vénézuéla.

II. Une lettre du ministre d'Amérique du 19 août 1903, No. 48, notifiant les noms des trois membres du tribunal.

III. Une communication du ministre d'Amérique du 24 août 1903, No. 49, portant qu'il enverra prochainement les copies certifiées conformes des protocoles signés à Washington le 7 mai 1903, de la part du Vénézuéla, et demandant—au nom du Vénézuéla—de prendre les mesures nécessaires pour la réunion du tribunal.

IV. Une lettre du ministre de Belgique du 27 août 1903, No. 1366, notifiant :

(a) L'adhésion de la Belgique aux protocoles signés à Washington le 7 mai 1903.



(b) L'acceptation des arbitres nommés par l'Empereur de Russie.

(c) La désignation de Monsieur Woeste, avocat à la cour de cassation à Bruxelles, ministre d'état, en qualité d'avocat conseil du gouvernement belge auprès du tribunal d'arbitrage.

V. Une lettre du ministre d'Angleterre du 29 août 1903, transmettant des copies certifiées conformes :

(a) Du protocole signé à Washington le 13 février 1903, entre la Grande-Bretagne et le Vénézuéla relatif au règlement des réclamations britanniques contre le Vénézuéla et autres affaires :

(b) Du protocole signé à Washington le 7 mai 1903, entre la Grande-Bretagne et le Vénézuéla soumettant à une commission mixte toutes les réclamations britanniques contre le Vénézuéla, autres que celles réglées par le dit protocole du 13 février 1903, et

(c) Du protocole signé à Washington le 7 mai 1903, entre la Grande-Bretagne et le Vénézuéla déférant à un tribunal d'arbitrage le règlement de la répartition entre les différents états créanciers du Vénézuéla des revenus des douanes affectés à ce but.

VI. Une lettre du ministre d'Angleterre du 29 août 1903, notifiant la nomination de Monsieur Arthur Larcom, du département des affaires étrangères, en qualité d'agent, et de Sir Robert B. Finlay, conseil du roi, membre du parlement, attorney-general, de Monsieur Arthur Cohen, conseil du roi, et de Monsieur H. Erle Richards, avocat, en qualité de conseils du gouvernement britannique auprès du tribunal d'arbitrage.

VII. Une lettre du ministre d'Italie du 29 août 1903, transmettant une copie certifiée conforme du protocole signé à Washington le 7 mai 1903 entre l'Italie et le Vénézuéla.

VIII. Une lettre du ministre d'Italie du 29 août 1903, notifiant la nomination de Monsieur le Commandeur Augusto Pierantoni, sénateur du royaume, professeur de droit international à l'Université de Rome, en qualité de conseiller légiste et de Monsieur le Comte A. de Bosdari, premier secrétaire de la légation de Sa Majesté le Roi d'Italie à la Haye, en qualité de son agent auprès du tribunal d'arbitrage.

IX. Une lettre du ministre d'Allemagne du 29 août 1903, No. 3224, transmettant des copies certifiées conformes :

(a) Du protocole signé à Washington le 13 février 1903, entre l'Allemagne et le Vénézuéla relatif au règlement des réclamations allemandes contre le Vénézuéla ;

(b) Du protocole signé à Washington le 7 mai 1903, entre l'Allemagne et le Vénézuéla soumettant à une commission mixte toutes les réclamations allemandes contre le Vénézuéla ;

(c) Du protocole signé à Washington le 7 mai 1903, entre l'Allemagne et le Vénézuéla pour déférer à un tribunal d'arbitrage le règlement de la répartition entre les différents états créanciers du Vénézuéla des revenus des douanes affectés à ce but.

X. Une lettre du ministre de France du 29 août 1903, notifiant la nomination de Monsieur Louis Renault, ministre plénipotentiaire, professeur à la faculté de droit de Paris, jurisconsulte du département des affaires étrangères, membre de la Cour permanente d'arbitrage, en qualité d'agent, et de Monsieur Clunet, avocat à la cour d'appel à Paris, membre et ancien vice-président de l'Institut de droit international, en qualité d'avocat conseil du gouvernement français auprès du tribunal d'arbitrage, et de Monsieur Fromageot, avocat à la cour d'appel à Paris, en qualité de secrétaire de la délégation française.

XI. Une lettre du ministre d'Espagne du 29 août 1903, notifiant la nomina-

tion de Monsieur le Marquis de Villasinda, en qualité de délégué du gouvernement espagnol auprès du tribunal d'arbitrage.

XII. Une lettre du ministre de Suède et de Norvège du 31 août 1903, transmettant une copie certifiée conforme de la déclaration par laquelle les Royaumes-Unis ont adhéré aux protocoles signés à Washington le 7 mai 1903.

XIII. Une lettre du ministre des affaires étrangères des Pays-Bas du 31 août 1903, No. 10924, notifiant la nomination de Monsieur de Weckherlin, envoyé extraordinaire et ministre plénipotentiaire de Sa Majesté la Reine des Pays-Bas, en qualité d'agent du gouvernement néerlandais auprès du tribunal d'arbitrage.

XIV. Une lettre du ministre de Suède et de Norvège du 31 août 1903, notifiant la nomination de Monsieur de Weckherlin, envoyé extraordinaire et ministre plénipotentiaire de Sa Majesté la Reine des Pays-Bas, en qualité d'agent du gouvernement de Suède et de Norvège auprès du tribunal d'arbitrage.

XV. Une lettre du président du conseil administratif du 31 août 1903, cabinet du ministre No. 1, transmettant une lettre du ministre de Russie du 17-30 août 1903, No. 330, et chargeant le secrétaire-général de la cour permanente d'arbitrage, de porter à la connaissance des membres du conseil administratif de la cour—en leur transmettant une copie de la lettre de Son Excellence M. de Struve—que la première réunion aura lieu le 1<sup>er</sup> septembre à 3 heures de relevée.

XVI. Une communication du ministre d'Allemagne du 31 août 1903, No. 3371, portant que Monsieur Lardy et le Professeur Matzen ont décliné le rôle d'arbitre, attendu que la Suisse et la Danemark, comme états créanciers, doivent être considérés comme puissances visées à l'article 3 du protocole et notifiant la nomination du consul-général d'Allemagne à New-York, Monsieur Bünz comme délégué et, en attendant son arrivée, de Monsieur de Prollius, conseiller de la légation impériale à la Haye, en qualité de délégué a. l. et du conseiller intime de justice, professeur de droit à l'Université de Bonn, Monsieur le Docteur Zorn, en qualité de jurisconsulte auprès du tribunal d'arbitrage.

XVII. Une lettre du ministre d'Amérique du 1<sup>er</sup> septembre 1903, No. 52, notifiant la nomination de Messieurs Wayne MacVeagh, Herbert W. Bowen et W. L. Penfield en qualité de conseils auprès du tribunal d'arbitrage, et de Messieurs Charles Ray Dean et Walter Scott Penfield, en qualité de secrétaires de la délégation américaine.

XVIII. Une lettre du ministre d'Amérique du 1<sup>er</sup> septembre 1903, No. 53, notifiant la nomination de Messieurs Wayne MacVeagh, Herbert W. Bowen et W. L. Penfield en qualité de conseils du gouvernement vénézuélien auprès du tribunal d'arbitrage et de Messieurs Charles Ray Dean et Walter Scott Penfield, en qualité de secrétaires de la délégation vénézuélienne.

XIX. Un télégramme du ministre du Mexique, en date du 1<sup>er</sup> septembre 1903, notifiant que les états mexicains admettent que la réunion préliminaire ait lieu devant un seul arbitre si toutes les autres puissances intéressées y consentent.

XX. Une lettre de Messieurs Wayne MacVeagh, Herbert W. Bowen et W. L. Penfield, conseils du Vénézuéla, du 1<sup>er</sup> septembre 1903, protestant contre le délai qui s'est produit par rapport au choix des arbitres en temps utile et déclarant que les représentants du Vénézuéla sont en mesure dès maintenant de prendre part à l'arbitrage et expriment l'avis que le tribunal, devant être composé de trois membres, d'après les termes des protocoles signés à Washington le 7 mai 1903, un nombre inférieur d'arbitres ne saurait prendre aucune décision.

XXI. Une lettre du ministre de France du 1<sup>er</sup> septembre 1903, notifiant l'adhésion de la France aux protocoles signés à Washington le 7 mai 1903, sous réserve que l'Article IV des dits protocoles ne ferait pas obstacle à l'application de la disposition de l'article 38 de la convention internationale, aux termes de



laquelle c'est le tribunal arbitral que "décide du choix des langues dont il fera usage et dont l'emploi sera autorisé devant lui," ainsi que de la renonciation du Vénézuéla aux stipulations de l'Article IV.

XXII. Une lettre du ministre d'Amérique du 2 septembre 1903, No. 54, transmettant des copies certifiées conformes par le secrétaire de la légation vénézuélienne à Washington, des protocoles signés à Washington le 7 mai 1903.

XXIII. Une lettre du ministre du Mexique du 1<sup>er</sup> septembre 1903, No. 38, confirmant son télégramme du 1<sup>er</sup> septembre 1903, au sujet de la réunion préliminaire pour l'affaire du Vénézuéla (voir No. XIX).

XXIV. Une lettre du délégué d'Allemagne en date du 2 septembre 1903, protestant, au nom de son gouvernement, contre l'assertion des conseils du Vénézuéla, dans leur note du 1<sup>er</sup> septembre 1903, concernant le délai qui s'est produit par rapport à la nomination des arbitres (voir No. XX).

XXV. Une lettre de l'agent d'Angleterre en date du 2 septembre 1903, protestant, au nom de son gouvernement, contre l'assertion des conseils du Vénézuéla, dans leur note du 1<sup>er</sup> septembre 1903, concernant le délai qui s'est produit par rapport à la nomination des arbitres (voir No. XX).

XXVI. Une lettre du ministre de France du 3 septembre 1903, adressant une copie de la lettre par laquelle le représentant du Vénézuéla en France fait connaître au ministre des affaires étrangères que le Gouvernement Vénézuélien ne faisait plus d'objection aux réserves opposées par le gouvernement de la République Française à l'Article IV du protocole signé à Washington le 7 mai 1903.

XXVII. Une lettre des conseils du Vénézuéla du 3 septembre 1903, demandant de leur envoyer copies des lettres ou documents que le bureau de la cour permanente d'arbitrage aurait reçus des représentants des puissances nonsignataires des protocoles de Washington du 7 mai 1903.

XXVIII. Une lettre des conseils du Vénézuéla du 4 septembre 1903, protestant contre la réponse du secrétaire-général du 3 septembre, qu'il se réserve de répondre ultérieurement à leur question posée dans leur lettre du 3 septembre 1903 concernant l'envoi d'une copie des documents.

XXIX. Une note des conseils du Vénézuéla du 3 septembre 1903, adressée aux membres du conseil administratif, contenant quelques observations au sujet de la constitution du tribunal, de la procédure arbitrale, etc.

XXX. Une lettre du ministre d'Amérique du 10 septembre 1903, No. 59, transmettant une copie du protocole signé à Washington le 17 février 1903 entre les États-Unis d'Amérique et le Vénézuéla soumettant à l'arbitrage toutes les réclamations américaines contre le Vénézuéla non liquidées, ainsi que, de la part du gouvernement vénézuélien, d'une copie certifiée conforme par le ministre des affaires étrangères du Vénézuéla.

XXXI. Une lettre du ministre d'Italie du 19 septembre 1903, No. 332, transmettant des copies certifiées conformes du protocole signé à Washington le 13 février 1903 entre l'Italie et le Vénézuéla concernant les réclamations italiennes contre le Vénézuéla, et celui du 7 mai 1903 relatif à la formation d'une commission mixte chargée d'examiner les réclamations susdites.

XXXII. Correspondance échangée entre la délégation du Vénézuéla et le bureau international de la Cour permanente d'arbitrage au sujet de la communication de tous actes et documents déposés au bureau :

(a) Une lettre des conseils du Vénézuéla du 3 septembre 1903 (voir No. XXVII) ;

(b) Une lettre du secrétaire-général de la cour permanente d'arbitrage du 3 septembre, 1903, No. 43, c ;

(c) Une lettre des conseils du Vénézuéla du 4 septembre 1903 (voir No. XXVIII) ;

(d) Une lettre du secrétaire-général de la cour du 5 septembre 1903 No. 53, c ;

(e) Une lettre du secrétaire-général de la cour du 10 septembre 1903 No. 62, c;

(f) Une lettre de Monsieur Wayne MacVeagh, conseil du Vénézuéle, du 16 septembre 1903, adressée au conseil administratif de la cour.

XXXIII. Une lettre du ministre des affaires étrangères des Pays-Bas du 24 septembre 1903, No. 11747, notifiant que Monsieur C. Crommelin, attaché au département des affaires étrangères, a été désigné pour faire fonction de secrétaire du délégué du gouvernement néerlandais.

XXXIV. Une lettre du chargé d'affaires d'Allemagne du 26 septembre 1903, No. 3698, concernant les titres et les qualités des membres de la délégation allemande et notifiant la désignation de Monsieur le Docteur Saelmans, attaché au département des affaires étrangères en qualité de secrétaire de la délégation allemande.

XXXV. Une lettre des conseils du Vénézuéla du 29 septembre 1903 transmettant trois enveloppes scellées avec prière de les remettre, aussitôt que possible, aux membres du tribunal d'arbitrage.

XXXVI. Une communication du ministre de Russie du 29 Septembre, 1903, portant que S. M. l'Empereur de Russie a nommé comme membres du tribunal Son Excellence Monsieur Mourawieff, Monsieur le Professeur H. Lammasch, et Son Excellence Monsieur de Martens.

XXXVII. Une lettre du ministre d'Espagne du 29 Septembre, 1903, transmettant:

(a) Une copie certifiée conforme du protocole signé à Washington le 2 Avril, 1903, entre l'Espagne et la Vénézuéla pour soumettre à une commission mixte toutes les réclamations non réglées de sujets espagnols contre le Vénézuéla.

(b) Une copie certifiée conforme d'une note adressée par le ministre d'Espagne, en date du 29 Septembre 1903, à messieurs les conseils du Vénézuéla leur demandant, s'ils sont d'accord avec l'interprétation attachée par lui dans cette note, aux termes du paragraphe premier de l'Article IV des protocoles du 7 Mai, 1903, entre le Vénézuéla d'une part et l'Allemagne, la Grande Bretagne et l'Italie d'autre part.

(c) Une copie certifiée conforme d'une note de messieurs les conseils du Vénézuéla, en date du 29 Septembre, 1903, portant à la Connaissance du ministre d'Espagne qu'ils sont d'accord sur l'interprétation formulée dans sa note susmentionnée, aux termes du paragraphe premier de l'Article IV desdits protocoles du 7 Mai, 1903.

XXXVIII. Une communication du ministre d'Angleterre du 30 Septembre, 1903, portant que S. M. l'Empereur de Russie a nommé comme membres du tribunal, en remplacement de Messieurs Matzen et Lardy, qui se sont récusés, Son Excellence Monsieur de Martens et Monsieur le Professeur H. Lammasch.

XXXIX. Une communication du chargé d'affaires d'Allemagne du 30 septembre 1903, No. 3746, portant que S. M. l'Empereur de Russie a nommé membres du tribunal Monsieur le Professeur H. Lammasch et Son Excellence le Conseiller Privé de Martens, en remplacement de Messieurs Lardy et Matzen, qui se sont récusés en raison du fait que la Suisse et le Danemark doivent être considérés comme puissances visées à l'article 3 des protocoles de Washington.

XL. Une lettre du ministre d'Angleterre du 30 septembre 1903, protestant au nom de son gouvernement contre la désignation de Monsieur Renault en qualité de conseil auprès du tribunal, en raison de sa qualité de membre de la Cour permanente d'arbitrage.

XLI. Une lettre du conseils du Vénézuéla du 30 septembre 1903, demandant de faire connaître au tribunal d'arbitrage leurs vœux par rapport plaidoyers.

XLII. Une lettre du ministre de Belgique du 24 septembre 1903, notifiant que le ministre de Belgique à Washington a adhéré le 12 juin 1903 aux protocoles du 7 mai 1903.

**XLIII.** Un télégramme du sous-secrétaire d'état du département des affaires étrangères du Mexique du 1<sup>er</sup> octobre 1903, notifiant que Monsieur Pardo, ministre du Mexique à la Haye, représentera les intérêts mexicains auprès du tribunal.

**XLIV.** Une lettre de Monsieur Herbert W. Bowen, conseil du Vénézuéla, du 1<sup>er</sup> octobre 1903, transmettant des copies et traductions de deux télégrammes du Président Castro du 8 septembre dernier, concernant les réserves faites par la France au sujet des langues et l'intervention indûment faite par le Général Velutini dans cette question.

**XLV.** Une lettre des conseils du Vénézuéla du 3 octobre 1903, transmettant trois copies du Livre Bleu anglais concernant l'affaire du Vénézuéla, ainsi que trois copies du protocole du 17 février 1903 pour être remises aux membres du tribunal.

**XLVI.** Une note des conseils des Etats-Unis d'Amérique du 3 octobre 1903, au sujet de l'adhésion du gouvernement des Etats-Unis d'Amérique à la communication faite par le Vénézuéla (*Preliminary examination of the question on behalf of Venezuela*), avec prière de la porter à la connaissance du tribunal et d'en faire parvenir copie aux représentants des puissances.

**XLVII.** Une lettre du ministre d'Amérique du 10 octobre 1903, No. 60, demandant de changer le titre de M. W. L. Penfield, en celui d'agent du gouvernement des Etats-Unis d'Amérique.

**XLVIII.** Une lettre de l'agent d'Amérique du 13 octobre 1903, transmettant des copies du mémoire des Etats-Unis d'Amérique.

**XLIX.** Une lettre du ministre de Belgique du 15 octobre 1903, No. 1622, transmettant des copies certifiées conformes des protocoles de Washington du 7 mai 1903.

**L.** Une lettre du ministre d'Espagne du 14 octobre 1903, transmettant un certificat de l'adhésion de l'Espagne aux protocoles de Washington du 7 mai 1903, à la date du 1<sup>er</sup> octobre 1903.

**LI.** Une lettre du secrétaire de l'agent des Pays-Bas, du 16 octobre 1903, transmettant des copies des documents suivants: "Petition of the agent of the Netherlands" et "Petition of the agent of Sweden and Norway."

**LII.** Une lettre du ministre de Belgique du 16 octobre 1903, No. 1632, transmettant une lettre du ministre d'état Monsieur Woeste, conseil de la Belgique, avec les "conclusions soumises au tribunal arbitral de La Haye par la Belgique," "l'exposé des faits relatif à la créance de la compagnie des eaux de Caracas" et le dossier produit à l'appui de ces conclusions.

**LIII.** Une lettre de l'agent de l'Allemagne du 15 octobre 1903, transmettant des copies du mémoire du gouvernement allemand.

**LIV.** Une lettre du ministre d'Angleterre du 18 octobre 1903, transmettant des copies du mémoire du gouvernement anglais.

**LV.** Une lettre du ministre d'Espagne, du 18 octobre 1903, transmettant des copies du mémoire du gouvernement espagnol.

**LVI.** Une lettre de l'agent d'Italie du 18 octobre 1903, transmettant des copies du mémoire du gouvernement italien.

**LVII.** Une lettre du Secrétaire de la délégation française du 18 octobre 1903, transmettant des copies du mémoire du gouvernement français.

**LVIII.** Une lettre du ministre du Mexique du 22 octobre 1903, No. 40, constatant qu'il n'a pas comparu devant le tribunal ni fait aucune démarche pour se constituer agent ou conseil de son gouvernement.

**LIX.** Une lettre de l'agent d'Angleterre du 26 octobre 1903, transmettant un mémoire au sujet de l'ordre des plaidoyers.

**LX.** Une lettre de l'agent de l'Angleterre du 27 octobre 1903, réclamant la production des originaux ou copies certifiées conformes de quelques documents

apportés comme preuves dans les conclusions de l'agent du gouvernement de Belgique ainsi que dans le mémoire du gouvernement de l'Espagne.

LXI. Une lettre du secrétaire de la légation de Belgique du 28 octobre 1903, transmettant une lettre de Monsieur Woeste, conseil de la Belgique, accompagnée de copies des conclusions qu'il a rédigées en réponse aux mémoires de la Grande-Bretagne, de l'Allemagne et de l'Italie.

LXII. Une lettre de l'agent de Belgique du 30 octobre 1903, portant que le dossier qui a été transmis au bureau contient les documents visés par M. l'agent d'Angleterre.

LXIII. Un télégramme du délégué d'Espagne du 30 octobre 1903, déclarant qu'il apportera les documents demandés par l'agent d'Angleterre.

LXIV. Une lettre du secrétaire de la légation de Belgique du 1<sup>er</sup> novembre 1903, transmettant une lettre du conseil de la Belgique accompagnée des originaux de quelques pièces, dont les copies se trouvent dans son dossier et qui peuvent être soumises à l'examen de tous les représentants des parties.

LXV. Une lettre du secrétaire de la délégation française du 2 novembre 1903, transmettant des copies du contre-mémoire du gouvernement de la République Française.

LXVI. Une lettre de l'agent de l'Allemagne du 2 novembre 1903, transmettant des copies du contre-mémoire du gouvernement allemand.

LXVII. Une lettre du secrétaire de la légation de la Belgique du 1<sup>er</sup> novembre 1903, transmettant des copies du protocole signé à Washington le 7 mars 1903 entre la Belgique et le Vénézuéla pour le règlement des réclamations contre le Vénézuéla et qui devaient être soumises à une commission mixte.

LXVIII. Une lettre de l'agent d'Angleterre du 2 novembre 1903, transmettant des copies du contre-mémoire du gouvernement de Sa Majesté Britannique.

LXIX. Une lettre de l'agent d'Italie du 2 novembre 1903, transmettant des copies du contre-mémoire du gouvernement Italien.

LXX. Une lettre de l'agent d'Angleterre du 2 novembre 1903, transmettant un supplément au contre-mémoire du gouvernement de Sa Majesté Britannique ainsi que des copies certifiées conformes des documents apportés comme preuves.

LXXI. Une lettre du secrétaire de l'agent des Pays-Bas du 2 novembre 1903, transmettant des copies du "counter case of the Netherlands and of Sweden and Norway."

LXXII. Une lettre du ministre d'Espagne du 2 novembre 1903, transmettant des copies du protocole signé à Washington le 2 avril 1903 entre l'Espagne et le Vénézuéla relatif au règlement des réclamations espagnoles contre le Vénézuéla.

LXXIII. Une lettre du ministre d'Espagne du 2 novembre 1903, transmettant des copies du contre-mémoire du gouvernement espagnol.

LXXIV. Une lettre du délégué d'Espagne du 2 novembre 1903, transmettant des copies certifiées conformes des notes de Monsieur Baralt du 16 et 19 novembre 1902, demandées par l'agent de Sa Majesté Britannique.

LXXV. Une lettre du ministre du Mexique à La Haye et à Bruxelles du 31 octobre 1903, notifiant sa désignation en qualité d'agent du Mexique auprès du tribunal.

LXXVI. Une lettre du ministre du Mexique du 31 octobre 1903, notifiant, en qualité d'agent de son gouvernement, l'adhésion du Mexique au mémoire et conclusions déposées par l'agent des Etats-Unis d'Amérique.

LXXVII. Une lettre du ministre du Mexique du 31 octobre 1903, transmettant des exemplaires du protocole signé à Washington le 23 février 1903 entre son gouvernement et le Vénézuéla pour le règlement des réclamations contre le Vénézuéla, qui ont été soumises à une commission mixte.

LXXVIII. Une lettre de l'agent d'Allemagne du 2 novembre 1903, transmettant un mémoire au sujet de l'ordre des plaidoyers.

LXXIX. Une lettre de l'agent des Etats-Unis d'Amérique du 3 novembre 1903, transmettant un mémoire en réponse au mémoire anglais sur l'ordre de priorité dans la discussion orale.

LXXX. Une lettre du chargé d'affaires de France du 3 novembre 1903, au sujet de la lettre adressée le 30 septembre 1903 par le ministre de Sa Majesté Britannique, protestant contre la désignation d'un membre de la cour pour agir comme conseil dans le présent arbitrage.

LXXXI. Une lettre du conseil du Vénézuéla du 3 novembre 1903, transmettant le contre-mémoire vénézuélien et la réponse du Vénézuéla au memorandum anglais au sujet de l'ordre des plaidoiries.

LXXXII. Une lettre du délégué d'Espagne du 4 novembre 1903, faisant connaître la désignation de M. Clunet, avocat conseil de France, pour l'assister aux séances en qualité d'avocat-conseil.

LXXXIII. Un télégramme de Monsieur Pardo, agent du Mexique, du 3 novembre 1903, portant qu'il s'excuse de ne pouvoir, par suite de maladie, assister pour le moment aux séances du tribunal.

LXXXIV. Un mémoire de l'agent des Pays-Bas du 4 novembre 1903 au sujet d'une demande de l'une des parties, que chaque puissance créancière du Vénézuéla devra fournir un état de ses créances déjà garanties et de celles qu'elle prétend faire concourir sur les 30 pour cent des revenus des douanes.

LXXXV. Un exemplaire d'une note du 14 avril 1894, contenant le projet d'une action collective contre le Vénézuéla, rédigé par les représentants d'Allemagne, Belgique, Espagne et France à Caracas (déposé sur le bureau du tribunal par M. Pierantoni, conseil de l'Italie, le 4 novembre 1903).

LXXXVI. Une lettre du ministre du Mexique du 28 octobre 1903, No. 41, d'où il ressort qu'il ne portait pas connaissance de la notification adressée le 1<sup>er</sup> octobre 1903 par M. J. Algara, sous-secrétaire des affaires étrangères à Mexico, au président du tribunal de sa désignation en qualité d'agent auprès du tribunal.

LXXXVII. Une lettre du conseil pour le Vénézuéla du 9 novembre 1903, notifiant la désignation de Monsieur José de J. Jaul en qualité de conseil du Vénézuéla auprès du tribunal.

LXXXVIII. Copie d'une déclaration de Monsieur Bowen citée par Monsieur Penfield dans son argumentation du 9 novembre 1903 (voir protocole IX).

LXXXIX. Liste des indemnités allouées par la commission mixte instituée en vertu du protocole allemand-vénézuélien du 13 février 1903.

XC. Résumé des conclusions présentées par le conseil italien.

XCI. Etat des frais du blocus supportés par l'Italie.

XCII. Une lettre de l'agent d'Italie du 12 novembre 1903, transmettant des données sur l'état actuel du travail des commissions mixtes.

XCIII. Protocole franco-vénézuélien du 19 février 1902.

XCIV. Une lettre de la légation de la Suède et Norvège du 11 novembre 1903, transmettant des copies du protocole signé à Washington le 10 mars 1903, pour le règlement des réclamations des Royaumes-Unis contre le Vénézuéla.

XCV. Une lettre de l'agent d'Angleterre du 12 décembre 1903, transmettant des exemplaires de l'état des créances britanniques allouées par la commission mixte siégeant à Caracas.

XCVI. Une lettre du ministre d'Allemagne du 12 décembre 1903, transmettant des exemplaires de l'état des créances allemandes allouées par la commission mixte siégeant à Caracas.

XCVII. Une lettre de l'agent des Pays-Bas du 12 décembre 1903, transmettant des exemplaires de l'état des créances néerlandaises allouées par la commission mixte siégeant à Caracas.

XCVIII. Une lettre de l'agent de Suède et Norvège du 12 décembre 1903, trans-

mettant des exemplaires de l'état des créances suédoises et norvégiennes allouées par la commission mixte siégeant à Caracas.

XCIX. Une lettre du ministre d'Espagne du 14 décembre 1903, transmettant des exemplaires de l'état des créances espagnoles allouées par la commission mixte siégeant à Caracas.

C. Une lettre du chargé d'affaires des Etats-Unis d'Amérique du 14 décembre 1903, transmettant des exemplaires de l'état des créances américaines allouées par la commission mixte siégeant à Caracas.

CI. Une lettre de l'agent d'Italie du 15 décembre 1903, transmettant des exemplaires de l'état des créances italiennes allouées par la commission mixte siégeant à Caracas.

CII. Une lettre du ministre d'Allemagne du 1<sup>er</sup> février 1904, portant qu'il représentera son gouvernement à la séance du tribunal d'arbitrage dans laquelle sera rendue la sentence.

CIII. Une lettre du ministre d'Amérique du 2 février 1904, portant qu'il représentera son gouvernement à la séance du tribunal d'arbitrage dans laquelle sera rendue la sentence.

CIV. Une lettre du ministre d'Italie du 18 février 1904, portant qu'il représentera son gouvernement à la séance du tribunal d'arbitrage dans laquelle sera rendue la sentence.



## LETTER OF COUNSEL FOR VENEZUELA TO THE ADMINISTRATIVE COUNCIL OF THE PERMANENT COURT.

THE HAGUE, *September 2, 1903.*

Our great anxiety to render any service in our power in behalf of the high tribunal, whose administrative business has been confided to your hands, is our excuse for addressing to you this communication. As Venezuela has no diplomatic representative at the court of Her Majesty the Queen of the Netherlands, we are obliged to address this communication directly to you. If Venezuela were so represented, we should, of course, address you through the usual diplomatic channel.

Your excellencies are well aware, without any representations from us, of the very great interest taken by all the American Republics in the court whose administrative business has been placed in your charge. While the South American Republics were not invited to attend the conference, they have acted with great promptness in availing themselves of the privilege the powers afforded to them, and in pursuance of their uniform political history since they attained their independence they are, we feel very sure, extremely anxious that this court should fulfill the high expectation entertained of it as a great international court of arbitration and peace. But to attain that most desirable end, we beg to submit, with the greatest respect and deference to your excellencies, that it will be necessary to preserve unimpaired the right of all independent nations, wishing to invoke the good offices of this high court, to declare for themselves in what manner they are to avail themselves of such offices. It follows, therefore, that the stipulations into which they enter as between themselves or others must be regarded as final and conclusive, and must be consequently duly respected.

It is not necessary that we should point out to your excellencies how fatal it would be to the future usefulness of this tribunal if, after the parties proposing to invoke its good offices have themselves defined the conditions upon which those offices are invoked, they find on arriving at The Hague that their stipulations have been disregarded. In saying this we disclaim absolutely the slightest desire to impute any want of good faith to anybody, and our only desire is to guard

against such misadventure as might result from an insufficient attention to the provisions of the protocols submitting the cause for arbitration to this court.

You will permit us the liberty of saying that, entertaining these views, we expected to find a strict observance of the letter and spirit of the provisions of the protocols dated May 7, 1903, regulating the arbitration between Great Britain, Germany, and Italy and Venezuela.

These protocols contain certain stipulations without which, it is due to frankness to say, the cause would not have been submitted to this court.

The first of these which we may now consider is the one offering to any creditor nation of Venezuela the privilege of joining in the arbitration. It is only necessary to read the language of the provision itself to see that no doubt whatever can arise as to the obligation of any creditor nation availing itself of that privilege to do so, subject to the provisions of the protocols themselves. No information has been vouchsafed us that France has exercised the privilege proffered her in that manner, and she can not be entitled, until she has so exercised it, to be recognized as interested in this arbitration. You may imagine, therefore, our surprise to discover that the counsel for France assumed the right to be heard before showing that France had fully availed herself of the privileges offered to the creditor nations who might desire to become parties to the arbitration. It seems to us that the orderly procedure would have been for the secretary-general to have recorded the names of the representatives of the parties to the protocols, and then to have asked what other nations had adhered to the protocols or desired to become parties to the arbitration, and to record the names of any representatives of any nation that had adhered or had become a party unconditionally.

Moreover, we beg also to remind your excellencies that the arbitration could very properly proceed if confined to only the original parties to the protocols.

The other provision in the protocols, respect for which is equally indispensable, is that which declares that "the proceedings shall be carried on in the English language." There is not the slightest ambiguity about these words; still the first step in the proceedings was the issuance of a notice in French. No doubt this was a mere inadvertence, and we have no desire to lay undue stress upon it, and what followed were probably equally inadvertencies, but they were none the less violations of this provision of the protocols. In asking that respect be paid to this provision of the protocol we think we are asking what is unquestionably to the interest of the tribunal. The English language is prescribed in the protocols as the official language of the proceedings, and surely, therefore, if the parties to the



agreement for arbitration decide to adopt the use of a particular language in their proceedings, it becomes the duty of the International Bureau and the tribunal to respect their wishes in that regard. In saying this we are well aware that the thirty-third article of the first convention of The Hague conference provided as follows: "The tribunal shall decide upon the choice of the language used by itself or to be authorized for use before it," but that provision is a part of the third chapter on arbitral procedure and is subject to the thirtieth article of the same convention, which provides that, "with a view to encouraging the development of arbitration, the signatory powers have agreed upon the following rules, which shall be applicable to the arbitral procedure unless the parties have agreed upon different regulations;" and the whole chapter on arbitral procedure is subject to the twentieth article, providing for the organization of the court, which provides that "with the object of facilitating immediate recourse to arbitration for international differences which could not be settled by diplomatic methods, the signatory powers undertake to organize a permanent court of arbitration accessible at all times and acting, unless otherwise stipulated by the parties, in accordance with the rules of procedure included in the present convention."

It will therefore be seen that the members of the conference in their anxiety to induce parties to submit their disputes to this court not only once but twice emphatically and in unmistakable terms invited the parties to such arbitration to regulate the procedure themselves.

It happened, however, that notwithstanding this anxiety on the part of the members of the conference the parties to the first arbitration here did not avail themselves of their right to designate the language to be used in their protocol, and the distinguished arbitrators in that cause earnestly advised that all future protocols should determine the language to be used. They said: "The undersigned deem it necessary to bring the attention of the governments in litigation to the necessity of arriving at an agreement beforehand with regard to the language they may desire the discussions before the court to take place in. It is absolutely necessary that the point be made clear prior to the commencement of the labors of the tribunal in order that the selection of the agent and counsel may be made with a view to their knowledge of the language in which the pleadings before the arbitrators are to be made. The necessity of translating for the use of the counsel the speeches made before the tribunal inevitably provokes a great loss of time. In view of these observations it is desirable:

"That the choice of the agent and counsel before the arbitral tri-

bunal be made in conformity with the wishes of the powers in litigation as to the language to be used before the tribunal; and

“That future compromises shall state the desire or decision of the contracting powers in this regard.”

When the present protocols were being prepared the parties were confronted with that earnest recommendation which had the unanimous concurrence of the eminent international jurists then composing the arbitral tribunal, Mr. Henning Matzen, Sir Edward Fry, M. de Martens, M. Asser, and M. de Savornin-Lohman.

In conformity with that unanimous recommendation on the part of those distinguished members of this tribunal these protocols were framed and the counsel of Venezuela were selected in pursuance of the stipulation providing for the use of the English language, and their entire preparation to begin the arbitration on yesterday, the day appointed in the protocols, for which they were fully prepared, was necessarily confined to that language.

Your excellencies will, therefore, appreciate that it is not in any narrow or exclusive spirit or with a desire to make the slightest technical objection that we feel constrained to invoke respect for that provision of the protocols not only as our undoubted right, but also as a condition precedent to our usefulness as counsel for Venezuela.

There is another grave matter of administration which, as friends of the tribunal and deeply interested in its future usefulness and success, we feel obliged to bring to your serious attention. It relates to the objections which would seem naturally to arise to the appearance of members of the permanent court as counsel of litigants before the tribunal. Those objections seem to us so obvious as seemingly to require mere mention, and we content ourselves with alluding to only two of them. Such persons, owing to their presumed acquaintance with other members of the tribunal in advance of its meeting and of their presumed fitness to express weighty opinions upon questions of international law, as attested by their appointment upon the permanent court, might be supposed to give them certain advantages over counsel not so situated. The second objection is even more serious—that suspicion might attach itself to the proceedings before the tribunal, that a decision in favor of the member of the court acting as counsel in one instance might exert some weight when the gentleman who was counsel yesterday and received a favorable decision is himself a judge to-day and the judge of yesterday is appearing as counsel before him.

We beg to repeat that we proffer these suggestions to your excellencies in absolute loyalty to the spirit which prompted His Imperial Majesty the Emperor of Russia to request the assembling of The Hague conference and with an earnest desire to contribute whatever

little influence we may possess to its continued growth in usefulness and influence in the world.

Respectfully submitted.

WAYNE MACVEAGH,  
HERBERT W. BOWEN,  
WILLIAM L. PENFIELD,  
*Counsel for Venezuela.*

To their Excellencies,

The MINISTER OF FOREIGN AFFAIRS OF THE NETHERLANDS,

*Ex officio President.*

And the ministers of Austria-Hungary, Belgium, Denmark, Spain, United States of America, Mexico, France, Great Britain, Greece, Italy, Japan, Persia, Portugal, Roumania, Russia, Servia, Siam, Sweden and Norway, ex officio members of the administrative council of the Permanent Court of Arbitration at The Hague.

## LETTER OF THE FRENCH AGENT TO THE ADMINISTRATIVE COUNCIL.

THE HAGUE, *November 3, 1903.*

**MR. SECRETARY-GENERAL:** I did not fail to transmit to my Government the letter which was addressed, on September 30 last, to your excellency by Sir Henry Howard, to be communicated to the members of the administrative council of the permanent court as well as to the members of the arbitral tribunal at present in session at The Hague. In this letter the minister of Great Britain declares that, in pursuance of instructions from his Government, he protests against the appointment of a member of the court of arbitration to act as counsel in the present arbitration.

This protest has appeared to the Government of the Republic to warrant immediately express reservations on its part.

After a careful examination of the question the Government of the Republic appointed Mr. Louis Renault to represent it before the arbitral tribunal intrusted with the settlement of the dispute which has arisen in connection with the claims against Venezuela. It considered and still considers that this appointment is within its rights, and that no one, especially any of the other litigants, has the authority to contest it.

According to article 37 of the convention of July 29, 1899, "the parties are entitled to appoint delegates or special agents to the tribunal for the purpose of acting as intermediaries between them and the tribunal. \* \* \* They are, moreover, authorized to intrust attorneys or counsel, appointed by them for the purpose, with the defense of their rights and interests before the tribunal."

This text leaves to the parties the fullest liberty regarding the choice of delegates or special agents, counsel, or attorneys. It establishes no incompatibility, and, consequently, there is reason to ask by what right one party would be justified in making observations on the manner in which another party has provided for the representation of its interests.

It is proper to observe also that a question of incompatibility had been raised during the discussions preliminary to the convention of 1899, and it is not indifferent to know the views which were expressed on this subject.

According to the report made by the Chevalier Descamps on behalf of the investigation committee, "Sir Julian Pauncefote, M. Lammasch, and M. Holls deemed it important to establish a general incompatibility between the functions of a member of the permanent court and those of special agent or attorney at this court, making an exception only in the case of a member of the court who is representing, as attorney or special agent, the country which appointed him." (Collection of the acts of the peace conference, I, p. 133.) Thus the members of the investigation committee who went the farthest in the direction of incompatibility, and among whom was the leading delegate from Great Britain, made an exception for the case in which a member of the court was representing the country which had appointed him, which is the case with M. Louis Renault.

In the "pious funds" case of California, which was adjudicated last year at The Hague, the two parties, the United States and Mexico, employed as counsel two members of the court of arbitration, viz, Messrs. Bernaert and Descamps, who were not their citizens. No observation was made on the subject.

The report of M. Descamps also indicates the opinion of the investigation committee on this same question of incompatibility: "The committee has expressed the opinion that no member of the court may, during the exercise of his functions as member of the arbitral tribunal, accept an appointment as special agent or attorney before another arbitral tribunal." The committee therefore supposed two tribunals of arbitration to be operating simultaneously, and it thought that a jurisconsult who was acting as judge in one of them ought not at the same time to act as agent or attorney before the other. However, this is not the case in the present instance, and, besides, this opinion was not sanctioned by the conference, since the convention contains no provision relating to incompatibilities.

The Government of the Republic can therefore affirm in all confidence that, in appointing M. Louis Renault as its agent, it not only exercised an absolute right, but in nowise deviated from the intentions expressed by those of the negotiators of the convention who wished to establish incompatibilities to a certain extent.

It would seem to appear from the letter of the British legation at The Hague that, in the opinion of the English Government, it would be desirable that the question thus raised should be reexamined, that is, without doubt, submitted eventually to the appreciation of the powers which signed the convention of 1899.

This is an acknowledgment that, in order to have the views of the British Government adopted, a revision of the convention would be necessary. The Government of the Republic, considering, on its part, that the question under discussion can not be raised except for

the future and through diplomatic channels, deems it necessary to formulate to-day expressly the present reservations regarding the communication addressed September 30 last by the British legation to the secretary-general of the Permanent Court of Arbitration.

Requesting you to bring this letter to the knowledge of the administrative council and the tribunal, I embrace this opportunity to renew to your excellency the assurances of my highest consideration,

SÉGUR D'AGUESSEAU.

His Excellency M. RUYSSENAERS,

*Secretary-General of the Permanent Court of Arbitration.*

## **PROTEST OF THE JAPANESE GOVERNMENT AGAINST REMARKS OF M. MOURAVIEW.**

**LEGATION OF JAPAN,  
*The Hague, February 27, 1904.***

The undersigned, envoy extraordinary and minister plenipotentiary of His Majesty the Emperor of Japan, has the honor, in pursuance of instructions from his Government, to address to his excellency the minister for foreign affairs of Her Majesty the Queen of the Netherlands, in his quality as the president of the administrative council of the Permanent Court of Arbitration, the following communication:

Being convinced that the Permanent Court of Arbitration can not properly be made use of for the purpose of attacking the action, motives, or good name of any power signatory of The Hague Convention of the 29th July, 1899, the Imperial Government of Japan, in defense of their honor and dignity, and to prevent the wrongful and unseemly use of that high court, formally and seriously protest against the disparaging remarks concerning Japan which were made by the president of the tribunal organized under the protocols of Washington of the 7th of May, 1903, at the meeting of the 22d instant.

The Imperial Government request that their protest may be placed on the records of the Permanent Court of Arbitration, and that it may be given the same range of publicity as the utterances which have called it forth.

The undersigned avails himself of this occasion to renew to his excellency the minister for foreign affairs the assurances of his highest consideration.

**MITSUHASHI.**



## **PROTEST OF MR. HERBERT W. BOWEN, AGENT FOR VENEZUELA, AGAINST THE AWARD.**

*CARACAS, VENEZUELA, March 15, 1904.*

**SIR:** Having read the award of the tribunal in the Venezuelan case, I have the honor to protest against this paragraph thereof:

“Whereas the good faith which ought to govern international relations imposes the duty of stating that the words ‘all claims,’ used by the representative of the Government of Venezuela in his conferences with the representatives of the allied powers (statement left in the hands of Sir Michael Herbert by Mr. H. Bowen of January 23, 1903) could only mean the claims of these latter and could only refer to them.”

The conclusion therein contained is absolutely erroneous, as but a glance at the statement of January 23, 1903, proves. This was the statement:

“Mr. Bowen proposes that all claims against Venezuela shall be paid out of the customs receipts of the two ports of La Guaira and Puerto Cabello, the percentage to be 30 per cent each month of the receipts. In case of failure on the part of Venezuela to pay the said 30 per cent, the creditor nations will be authorized to put, with the consent and without any opposition on the part of Venezuela, Belgian custom officials in charge of the said two custom-houses, and to administer them until the entire foreign debt is paid.”

If instead of the words “all claims against Venezuela,” “the creditor nations,” and “the entire foreign debt,” these words had been used, “all claims of the allied powers against Venezuela,” “the allied creditor nations,” and “the entire debt of the allied powers,” the interpretation given to the statement by the arbitrators would be exact, but as the statement reads no such meaning can be properly given to it. The representatives of the allied powers accepted it without a protest, and four days later they requested and accepted another statement, which contained this clause, “and it is distinctly understood that the said 30 per cent will be given exclusively to meet the claims mentioned in the recent ultimatums of the allied powers and the unsettled claims of other nations that existed when the said ultimatums were presented.”

Lord Lansdowne's cablegram of January 23, 1903, also shows that there was no doubt as to the meaning of the words "all claims," for in it he states: "It is understood that £213,000 is the sum which 30 per cent of the customs of the two ports would yield, and that this amount is intended to meet not only the claims of all the powers for compensation, but the entire foreign debt of Venezuela, which amounts to £5,742,000." Not satisfied with that arrangement, he proposed that "a portion of the revenue of the two ports might possibly be set apart" to extinguish the claims of the allied powers within five years.

A further and a positive proof that the said conclusion of the arbitrators is erroneous is to be found in my credentials, which the said representatives examined and accepted without protest before the negotiations began. The credentials were these:

"The Venezuelan Government grants full powers to Mr. Herbert W. Bowen to effect at Washington with the representatives of the nations that have claims against Venezuela the immediate settlement of them or the preliminaries for the submission to arbitration of such of them as can not be settled immediately."

It is perfectly clear, therefore, that "all claims" did not mean simply the claims of the allied powers, but of all the powers.

If the representatives at Washington of the allied powers had understood that I had only their claims in mind when I presented to them my credentials and the statements of January 23 and 27, they would subsequently have accused me of deception and bad faith when I refused to give them preferential treatment, and the other creditor nations would have refrained from countenancing, much less supporting, my contention that the demand for preferential treatment was new and unacceptable.

Consequently the paragraph in question of the award should be marked with my protest, and I wish to be clearly understood as declaring that the paragraph to be correct would have to read thus:

"Whereas the good faith which ought to govern international relations imposes the duty of stating that the words 'all claims,' used by the representative of the Government of Venezuela in his conferences with the representatives of the allied powers, could only mean the claims of all the creditor nations, and not of the allied powers alone."

I gladly avail myself of this opportunity to renew to your excellency the assurance of my highest consideration.

HERBERT W. BOWEN.

His Excellency Mr. L. H. RUYSSENAERS,

*Secretary-General of the International Tribunal at The Hague.*

**INSTRUCTION OF DEPARTMENT OF STATE TO MR.  
NEWELL RESPECTING THE THIRD CLAUSE OF  
THE DECISION.**

No. 410.]

DEPARTMENT OF STATE,  
*Washington, D. C., March 9, 1904.*

SIR: The Department has given careful consideration to the award of The Hague Tribunal in the case of the Venezuelan arbitration. The first and second clauses adjudge to Germany, Great Britain, and Italy the preferential payment of their claims over those of all other Governments against Venezuela out of 30 per cent of the assigned customs revenues of La Guira and Puerto Cabello. The third clause of the award decides that "each party to the litigation shall bear its own costs and an equal share of the costs of the tribunal." To these three clauses of the award is added the decree that "the Government of the United States of America is charged with seeing to the execution of this latter clause within the term of three months."

Inasmuch as the protocols did not confer upon the tribunal any power to commission any government to see to the execution of the award or any part of it by other governments, the United States Government would feel great delicacy in undertaking to execute the mandate. The want of authority on its part to do so would make it extremely embarrassing. In case any one of the other States should refuse to pay its own costs or its share of the costs of the tribunal, the United States Government would have no means to execute the mandate. The action of the United States in respect to the payment of the costs must, therefore, be limited to the payment of its own costs and its share of the costs of the tribunal.

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I am, etc.

JOHN HAY.

STANFORD NEWELL, Esq.,  
*The Hague.*

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**PART II.**

**Case of Venezuela.**

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## THE CASE OF VENEZUELA.

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The question submitted for decision by the signatory powers to certain protocols signed May 7, 1903, is whether Great Britain, Germany, and Italy are entitled to preferential treatment in the payment of their claims against Venezuela, as demanded by them, or whether all creditor nations are entitled to equality of treatment in the payment of their claims, as contended for by Venezuela.

### PRELIMINARY EXAMINATION OF THE QUESTION ON BEHALF OF VENEZUELA.

In the inauguration of any court of such high character and wide jurisdiction as the Tribunal of Arbitration, constituted by the peace conference of 1899, questions of more or less seriousness will inevitably arise when the members of such a tribunal are required to hear and decide for the first time a controversy submitted for their decision. Questions of convenience of administration, as well as questions of procedure and possibly other questions, will then emerge, which could not have been foreseen, or, if foreseen, wisely provided for by the conference itself.

The signatory powers to the protocols now before the court were therefore very fortunate in the fact that the tribunal had heard and decided a cause of importance before the protocols now before it were signed, because, after the decision in that cause known as the Pious Fund case was rendered, the eminent and distinguished jurists who heard and decided that controversy all joined in a communication of great value, making suggestions which in their very competent judgment would, if followed, in future cases tend to obviate some practical difficulties in the hearing and determination of future controversies. Their communication was as follows:

[Translation—Inclosure No. 6 in No. 566.]

INTERNATIONAL BUREAU OF THE PERMANENT COURT OF ARBITRATION,

*The Hague, October 14, 1902.*

MR. MINISTER: The undersigned members of the arbitration tribunal constituted in virtue of the treaty of Washington of the 22d of May, 1902, between the United States of America and the United States of Mexico, have the honor

to address to your excellency as president of the administrative council of the Permanent Court of Arbitration, this note containing some reflections concerning the procedure to be followed before the Permanent Court of Arbitration. At the same time the undersigned express the desire that your excellency will be good enough to communicate this note to all the members of the administrative council, requesting them to submit it to the kind consideration of their Governments.

The convention signed at The Hague on the 22d of July, 1899, for the pacific settlement of international disputes presents, without any doubt, a just and rational basis for the procedure to be followed before an international arbitration tribunal. The two great American States that in virtue of the treaty of Washington of the 22d of May, 1902, have agreed to make application to The Hague court concerning arbitral procedure in order to decide their difference relative to the "Plous fund of the Californias" can certify that the course of the arbitral tribunal, of which we have the honor to be the members, has conformed to the provisions of this act.

The regulations for arbitral procedure prepared by the peace conference have afforded a solid basis and solid rules for the procedure of the Tribunal of Arbitration between the United States of America and the United States of Mexico.

Nevertheless, desirous of contributing their feeble efforts toward the progressive development of international arbitration and foreseeing in the future possible difficulties in the performance of the regulations of arbitral procedure sanctioned by The Hague Convention, the undersigned members of the first arbitration tribunal that held its sittings at The Hague consider themselves under the moral obligation of submitting to the kind consideration of the interested Government some points which may be regulated easily by subsequent agreements between the States in litigation. The undersigned arbitrators are deeply impressed with a feeling of their duty to contribute to the better interpretation and carrying out of The Hague Convention for the pacific settlement of international disputes and to consolidate the regular course of such future arbitral tribunals as may be constituted with the view of reestablishing good understanding between nations.

It is desirable that jurisprudence be established in the domain of international arbitration, and it is to be hoped that each future arbitral tribunal will add a stone to the edifice of international arbitration whose foundations were laid by The Hague Convention of 1899.

Such are the motives of our action.

The observations to which we venture to take the liberty of attracting the attention of the high Governments through the kind intervention of your excellency are as follows:

#### I.

According to Article XXII of The Hague Convention, the International Bureau is the intermediary of communications relating to meetings of the Permanent Court of Arbitration. The signatory powers have agreed to communicate to the International Bureau certified copies of all arbitration stipulations entered into between them and of all arbitration verdicts having to do therewith.

It is evident that this obligation is of weight above all in these cases in which the Permanent Court of Arbitration has to decide any dispute arising between the signatory powers.

And yet The Hague Convention does not precisely state the method to be observed in cases which the Permanent Court of Arbitration is called upon to adjudicate.



In view of this circumstance the undersigned express the opinion—

That powers in litigation that have agreed to submit their conflict to the Permanent Court of Arbitration, immediately upon the signature of the compromise, shall communicate this act to the International Bureau, requesting it to take the necessary measures for the installation of the arbitral tribunal;

That the same powers, after the choice of the arbitrators, shall communicate their names to the International Bureau without delay; and finally,

That the International Bureau, on its part and without delay, shall communicate to the arbitrators nominated by the powers in litigation the signed compromise and the names of the members of the arbitral tribunal already designated.

## II.

In virtue of Article XXXII and following articles the arbitrators nominated by the powers in litigation have been obliged to choose the umpire, who, according to Article XXXIV, becomes by right the president of the tribunal.

These stipulations might give rise to some inconvenience which it would be worth while to forestall.

The third or fourth member of the arbitral tribunal, chosen by his colleagues, who have been nominated directly by the power in litigation, is not always "umpire" in the technical sense of this word. He is, in the first place, the member of the arbitral tribunal who, having the confidence of his colleagues, is chosen as their colleague.

Still it might occur that this member of the arbitral tribunal, chosen by his colleagues, might refuse categorically to take upon himself the presidency of the tribunal for motives absolutely personal but perfectly justifiable. Such member chosen on account of his great reputation as a jurist and because of his profound learning, would be eminently useful as a member of the arbitral tribunal. But because of his absolute refusal to preside at the meetings of the tribunal, the other members, already nominated, would be compelled to abandon their choice, and by so doing deprive the tribunal of the enlightenment of a jurist and very distinguished statesman.

In consideration of these circumstances the undersigned express the opinion—

That future compromises shall leave to the members of the arbitral tribunal full powers to select from among themselves the president of the tribunal, and

That the nomination of the president of the arbitral tribunal shall take place at the first meeting of the members nominated or chosen.

## III.

Article XXXVIII of The Hague Convention leaves to the arbitral tribunal the choice of the language it shall use and shall authorize to be used before it.

While acknowledging the wisdom of this stipulation, the undersigned deem it necessary to direct the attention of the Governments in litigation to the necessity of arriving at an agreement beforehand with regard to the language they may desire the discussions before the tribunal to take place in. It is absolutely necessary that the point be made clear prior to the commencement of the labors of the tribunal in order that the selection of the agent and counsel may be made with a view to their knowledge of the language in which the pleadings before the arbitrators are to be made. The necessity of translating for the use of the counsel the speeches made before the tribunal inevitably provokes a great loss of time. In view of these observations it is desirable:

That the choice of the agent and counsel before the arbitral tribunal be made

in conformity with the wishes of the powers in litigation as to the language to be used before the tribunal; and

That future compromises shall state the desire or decision of the contracting powers in this regard.

#### IV.

Article XXXIX of The Hague Convention stipulates that the arbitral procedure shall include, as a general rule, two distinct phases—preliminary examination and discussion.

The preliminary examination consists in the communication made by the respective agents to the tribunal and to the opposite party of all records printed or written and of all documents containing the arguments invoked in the case.

This distinction between the preliminary examination and the discussions is absolutely justified and necessary. However, it is not practicable except on condition that the parties in litigation observe it by producing all the records and documents prior to the commencement of the discussions. In other words, the preliminary examination, as a rule, must be finished before the commencement of the discussion before the tribunal. Only as a rare exception and one legalized in due form may the tribunal admit the production of new records and documents during the course of the discussions, under the reservation specified in Article XL and following articles of The Hague Convention.

In view of these observations, the undersigned express the opinion:

That the distinction between the two phases—namely, the preliminary examination and the discussions—be observed as strictly as possible by the parties in litigation;

That, if necessary, a longer time be granted by the parties for the communication through the intervention of the International Bureau or directly to the members of the tribunal, and vice versa, of all documents and records;

That the arbitral tribunal, once assembled, may without loss of time proceed with the discussion; and

That after closing of the discussions—that is to say, in the time that intervenes between the close of the discussions and the pronouncement of the arbitral verdict—no communication of any new records or writings shall be allowed on the part of the parties in litigation.

#### V.

The Hague Convention has acknowledged the right of the powers in litigation to reserve in the compromise the right to demand a revision of the arbitral verdict (Article LV). This demand may only be made on the ground of the discovery "of some new fact which would be of a nature to exercise a decisive influence on the verdict." The same arbitral tribunal that has adjudicated the case is also required to rule on the merits of the demand for a revision. Lastly, the compromise should determine the period within which the demand for a revision is admissible.

This stipulation may, in practice, provoke very grave inconvenience.

If the period within which the demand for a revision is admissible be very short (as that stipulated in the above-mentioned protocol of Washington of the 22d of May, 1902), it will very rarely happen that a new fact, giving rise to a revision, will be discovered in time.

If, on the contrary, a rather long period be stipulated, or if the right be accorded of demanding a revision at any time, the obligatory force of the arbitral verdict will remain for a long time or forever in suspense.

This does not seem to be at all desirable.

In fact, the arbitral verdict will almost always provoke discontent in one of the parties.

If this feeling be not appeased in the shortest possible time by reason of the choice judge or of the fait accompli, the conflict between the nations in litigation may assume an acute character, endangering international peace.

Hence the undersigned express the opinion:

That in the compromise the smallest possible use be made of the power accorded by Article LV of The Hague Convention.

Such, Mr. Minister, are the few views and observations that we have the honor to submit to your high approval with the respectful request that they be sent to all the signatory powers of The Hague Convention for the peaceful settlement of international disputes.

Accept, Mr. Minister, the assurances of our high consideration.

HENNING MATZEN.

EDWARD FRY.

MARTENS.

T. M. C. ASSER.

A. F. DE SAVOIRNIN-LOHMAN.

The protocols now before the court were framed, whenever possible, in conformity with these wise and practical suggestions, and the counsel for Venezuela have endeavored in the past and will endeavor in the future to conform the conduct of their side of this controversy, as they have no doubt their learned opponents will also, as closely to those suggestions as the circumstances of the present contention will permit.

#### BRIEF ON BEHALF OF EQUALITY OF TREATMENT.

The counsel for Venezuela appear before this tribunal, as we are sure our learned opponents also do, in no mere spirit of controversy, with no desire to press unduly any consideration which seems to be in our favor, or to exaggerate in the slightest degree any supposed mistake by our opponents, or to place undue stress upon any arguments which we suppose may be fairly drawn from the conduct of Great Britain, Germany, and Italy in making war upon Venezuela when viewed in the light of the history of nations or of the history of international law, and which arguments we may believe are of favorable augury for our view of the contention now to be submitted for your decision. In other words, we unfeignedly desire that this high court shall be placed in full possession of every circumstance and every argument having a legitimate relation to the controversy before it without the slightest reference to its ultimate bearing upon the decision. That decision, as we understand this controversy, will require you to decide between equality of treatment for all independent nations and preferential treatment for Great Britain, Germany, and Italy over all others, and in making that decision you will of necessity have to pass upon the respective merits, in view of the

facts laid before you, of two different courses of action—that of resorting to the methods of war against Venezuela, the seizing and sinking of her ships, the blockading of her ports, and the bombarding of her forts, as was done by the three great nations claiming preferential treatment of their claims; and the peaceful methods pursued by the other creditor nations of Venezuela in urging payment of their claims, including the United States, Mexico, France, Spain, Sweden and Norway, the Netherlands, and Belgium.

This question, as you will at once appreciate upon the mere statement of it, can not depend for its proper solution solely upon the doctrines of international law, strongly as these doctrines have always emphasized the equality of all independent states, as heretofore interpreted and accepted; nor can it be hoped that many precedents can be found, even with the most exhaustive search of the previous relations of independent states, which precedents could be of essential service to you in reaching your decision. Indeed, the only precedent we have been able to find is the recent case of China where the great indemnity was extorted by allied nations by force, but the indemnity thus extorted was distributed upon terms of exact equality among all the nations presenting claims, whether they joined in the march to Peking or not. In other words, the principle of distribution, applied in that case, is exactly the principle for which we are contending in the present case—that of absolute equality of treatment of all equally independent states. Such equality of treatment, which is *prima facie* the inherent right of independent nations, is what we are contending for, while our opponents are contending that by making war upon Venezuela, and by thus making war extorting the fund to be distributed according to your decision, they have entitled themselves to an award of merit from this tribunal in the form of the preferential payment of their claims.

It is, therefore, quite apparent that the character of your decision must depend, to a very great degree, upon the character of the illustrious tribunal of which you are members, and of which you are, for the purposes of this controversy, the sole representatives. If, therefore, we feel compelled, at the very outset of our argument, to emphasize the story of its creation and the ethical quality which permeated all the proceedings which culminated in providing for the nations this high court of international justice and of international peace, it is only because we believe such emphasis is indispensable to lifting the spirit of our discussions and of your deliberations above the pride of martial strength and the willingness to make aggressive war, which is a natural consequence of such strength, into the higher and serener air where equality is always recognized as equity, the air of that international forbearance and long-suffering which seeks for righteousness and, if possible, for peace in all the relations of the

peoples of the earth; and in claiming equality of treatment for all the creditor nations of Venezuela we wish to emphasize as strongly as possible the essential moral difference between unnecessary and aggressive warfare waged by strong nations against weak nations for the selfish objects of intimidation, of extortion, or of conquest, and the necessary and heroic warfare waged unselfishly for the unity of kindred peoples, or in defense of national honor and independence, or for the maintainance of Christian civilization and the true welfare and progress of mankind.

We have no desire to augment either the dignity of this high court or the gravity of the question now presented to it. We simply approach you in absolute loyalty to the spirit which prompted the Emperor of Russia to call the peace conference which assembled in this historic city four years ago. Addressing the diplomatic representatives accredited to his court, by his minister of foreign affairs, that august sovereign on August 4, 1898, declared:

The maintenance of general peace and a possible reduction of the excessive armaments which weigh upon all nations present themselves, in the existing conditions of the whole world, as the ideal toward which the endeavors of all governments should be directed. In the conviction that this lofty aim is in conformity with the most essential interests and the legitimate views of all powers, the Imperial Government thinks that the present moment would be very favorable for seeking, by means of international discussion, the most effectual means of insuring to all peoples the benefits of a real and durable peace, and above all to put an end to the progressive development of the present armaments. The intellectual and physical strength of the nations, labor and capital, are for the major part diverted from their natural application and unproductively consumed. Hundreds of millions are devoted to acquiring terrible engines of destruction, which, although to-day regarded as the last word of science, are destined to-morrow to lose all value in consequence of some fresh discovery in the same field. National culture, economic progress, and the production of wealth are either paralyzed or checked in their development. This conference should be, by the help of God, a happy presage for the century which is about to open. It would converge in one powerful focus the efforts of all states which are sincerely seeking to make the great idea of universal peace triumph over the elements of trouble and discord. It would, at the same time, confirm their agreement by the solemn establishment of the principles of justice and right, upon which repose the security of states and the welfare of peoples.

Such were the inspiring and elevating words in which the leading nations of the world were invited by one of the most powerful of its rulers to assemble here, and such was the noble and hopeful idealism by which it was expected their labors would be directed. While they could not misunderstand the significance of the unexpected collocation of circumstances shown in the fact that this trumpet call to the nations to ascend to the higher altitudes where the aim of their labors should be to secure an era of more widely diffused peace and the solemn establishment of the principles of justice and right for all peoples, weak or powerful, great or strong, did not proceed from some

small country without the strength necessary to defend itself against the apprehended aggressions of some powerful neighbor, but it proceeded from an absolute monarch, reigning without question over vast multitudes of warlike subjects, and possessing one of the greatest empires of the earth, which is in less danger than any other of serious injury, though the world combined in arms against it—

The Hercules of nations, shaggy-browed,  
Enormous-limbed, supreme on steppe and plain.

The answer to this call for a conference to devise the ways of international peace was in every way worthy of the sublime invocation assembling it, and if it is not considered necessary to follow further the discussions relating to the diminution of armaments and the amelioration of the usages of war by land and sea it is only because those subjects are not relevant to the questions involved in the present controversy, nor are they in any degree involved in its proper decision. Confining ourselves, therefore, in continuing the history of the conference to those matters only which, in our judgment, are relevant, we find that on August 30, 1898, Mr. Balfour, who, owing to the absence of Lord Salisbury, was in charge of the foreign office of Great Britain, stated that the British Government most warmly sympathized with and approved "the pacific and economic objects which his Imperial Majesty has in view;" while the Government of the United States at once accepted the invitation to the conference in the most cordial terms. Indeed, all the nations invited accepted the invitation, and Great Britain, in giving her formal adherence, October 24, 1898, among other statements reiterated her "cordial sympathy with the objects and intentions of His Imperial Majesty," and added "that this sympathy is not confined to the Government, but is equally shared by popular opinion in this country, as has been strikingly manifested since the Emperor's proposal has been made generally known, by the very numerous resolutions passed at public meetings and societies in the United Kingdom. There are indeed few nations, if any, which, both on grounds of feeling and interest, are more concerned in the maintenance of general peace than Great Britain."

On November 1, 1898, Mr. Peirce, then chargé d'affaires of the United States at St. Petersburg, speaking of the proposal, emphasizes its "humanitarian aspect looking toward a future universal peace which, while it has long been the dream of philanthropists, has never before, I believe, been recognized at an attainable end, even in the distant future, in the materialism which governs state policies and international relations. As the law of force has heretofore reigned supreme, it has now become a subject of practical discussion by responsible sovereigns, statesmen, and diplomatists whether in the



words of the Emperor of Russia, the principles of justice and right may not take its place."

It requires only a moment of reflection to furnish every student of history and every lover of mankind with a vivid picture of the actual past history, with its heartbreaking tragedies, its untold Calvaries of sacrifice, its unnumbered hecatombs of innocent victims, its agonies and despairs, its shattered limbs and broken hearts, the blood uselessly shed and the lives wantonly destroyed, as if men were really devils and not men at all. The other picture is of a happy, prosperous, and contented human family, seeking to found, in the guidance of a better spirit, a temple whose corner stone should be righteousness and whose top stone should be peace.

On January 11, 1899, the Russian foreign office addressed a circular letter to the powers which had accepted the invitation to the conference, in which it was added that the Imperial cabinet observed with lively satisfaction evidence of the warmest approval of the suggestion of the conference which had reached it, "and continued to be received from all classes of society in various parts of the globe," and the opinions expressed that it would be possible to proceed forthwith to a preliminary exchange of ideas between the powers with the object, among others, "of preparing the way for a discussion of the questions relating to the possibility of preventing armed conflicts by the pacific means at the disposal of international diplomacy." It was added that in the event of the powers considering the present moment favorable for the meeting of such a conference, among the subjects to be submitted would be that of accepting in principle the employment of good offices and mediation and facultative arbitration in cases lending themselves thereto, with the object of preventing armed conflicts between the nations; to come to an understanding with respect to the mode of applying these good offices, and to establish a uniform practice in using them.

In replying to this circular note of the Russian Government, Lord Salisbury, on behalf of the British Government, reasserted, February 14, 1899, that the British Government "gladly accepts the invitation to a conference to discuss, among other subjects, the prevention of armed conflicts by pacific diplomatic procedure." And he added that it was not "necessary for Her Majesty's Government to make any fresh declaration of their earnest desire to promote, by all possible means, the principle of recourse to mediation and arbitration for the prevention of war." From these explicit and cordial declarations of the British Government no dissent was heard from any quarter. The conference was, therefore, most distinctly and authoritatively committed, by the very character of its existence, to endeavor to substitute for the right of the stronger to make war in order to despoil the weaker at its own mere will and pleasure "the principles

of justice and right, upon which repose the security of states and the welfare of peoples."

It was, unquestionably, a sublime mandate. It was given at what was believed to be an auspicious time, just as the twentieth century of the Christian era was beginning, and nineteen hundred years after "peace on earth and good will to men" was first announced as the true relations of men to each other. It emanated from the sovereign of the largest military power, with resources for increasing its military strength unrestricted by constitutional or parliamentary limitations. It assembled 100 men, not idealists or dreamers of impracticable dreams, but fit representatives of the world's statesmanship, diplomacy, jurisprudence, and war, sensible and practical men of affairs, accredited by 26 independent nations, and authorized to speak in their name; and it is only just to declare that the results of their labors were eminently worthy of the powerful sovereign to whose initiative they owed their assembling, to the sublime mandate they had received, and to their own well-earned renown.

Representing, as we do, in this controversy, a weak South American Republic, it may be permitted to us to state the great and profound regret felt by all the republics of the American continent that they were not all equally invited to take part in a conference of such worldwide import. The fact that of those great and growing republics only the United States and Mexico were represented at the conference was chiefly to be regretted because the delegates present at it were denied the privilege, as well as the advantage, of hearing the views entertained by the statesmen and diplomats of Central and South America upon many interesting and important questions of international law and the usages of nations, as well as their possible improvement along practical lines. Those republics have, however, magnanimously declined to take umbrage at their exclusion from this first great council board of the nations, and have resolved to avail themselves of the tribunal although it was constituted without consultation with them. By the terms of the convention itself, and by her own declaration of willingness to conform to it, Venezuela has not only entitled herself to be heard by you on an exact equality with her great and powerful opponents, but she is entitled to be credited, until the contrary appears, with an unusual devotion to the conclusions which the conference reached.

It assembled in this city May 18, 1899, when it was found as has been stated, that 100 delegates were present, representing 26 powers, including the powers of Great Britain, Germany, and Italy, now represented before you. The minister of foreign affairs of this country welcomed the delegates to The Hague and declared that the Emperor of Russia, for calling the conference, had received the acclaim of the whole civilized world, and had desired to realize the wish expressed



by Alexander I, that of seeing all sovereigns and all nations united for the purpose of living as brethren, aiding each other according to their reciprocal needs; and M. de Staal, the ambassador of Russia at the Court of St. James, spoke in the same lofty strain on assuming the presidency of the conference. He began by paying a tribute to the Netherlands which, in these days of the expansion of great states at the cost of smaller nations, ought never to be forgotten. He said:

In the quiet surroundings of The Hague, in the midst of a nation which constitutes a most significant factor of universal civilization, we have in our eyes a striking example of what may be done for the welfare of peoples by valor, patriotism, and sustained energy. It is upon the historic ground of the Netherlands that the greatest problems of the political life of states have been discussed. It is here, as one may say, that the cradle of the science of international law has stood. For centuries the important negotiations between European powers have taken place here, and it is here that the remarkable treaty was signed which imposed a truce during the bloody conflict between states. \* \* \* We find ourselves surrounded by great historic traditions.

And the Nestor of European diplomacy then added these memorable words:

To seek the most efficacious means to assure to all peoples the blessings of a real and durable peace \* \* \* is the principal object of our deliberations. The name of peace conference, which the instincts of the people, anticipating a decision on this point by the governments, has given to our assemblage indicates accurately the essential object of our labors.

The peace conference must not fail in the mission which devolves upon it. It must offer a result of its deliberations which shall be tangible, and upon which all humanity waits with confidence. The eagerness which the powers have shown in accepting the proposition contained in the Russian circular is the most eloquent testimony of the unanimity which peaceful ideas have attained. \* \* \* The very membership of this assemblage is a certain guaranty of the spirit in which we approach the labor which has been confided to us. The governments are represented here by statesmen who have taken part in shaping the destiny of their own countries, by eminent diplomatists who have been concerned in great negotiations, and who all know that the first need of peoples is the maintenance of peace. Besides, here and there will be found savants who, in the domain of international law, enjoy a justly merited renown. The general and superior officers of the armies and navies, who will help us in our labors, will bring to us the assistance of their high competence. Diplomacy, as we all know, has for its object the prevention and the appeasement of conflicts between states, the softening of rivalries, the conciliation of interests, the clearing up of misunderstandings, and the substitution of harmony for discord. \* \* \* We shall also undertake in a special manner to generalize and codify the practice of arbitration, of mediation, and of good offices. These ideas constitute, so to speak, the very essence of our task. The most useful object proposed by our efforts is to prevent conflicts by pacific means. \* \* \* The ties which unite all parts of the human family are ever becoming closer. A nation could not remain isolated if it wished. It finds itself surrounded by a living organism, fruitful in blessings for all, and it is and should be a part of this same organism. Without doubt rivalries exist. \* \* \* Such rivalry may do good, provided that above it all there shall remain the idea of justice and the lofty sentiment of human brotherhood. \* \* \* The nations have a great need for peace.

The same lofty ethical idea of the mission of the conference was expressed by M. de Martens, also, like M. de Staal, representing Russia. We have in common, he declared, "the object of giving a more solid basis to peace, to concord, and to friendship among nations. \* \* \* We are working not for a political, but for a humanitarian purpose; not for the past, nor for the present, but for the future."

Animated by this generous enthusiasm for justice and peace, Lord Pauncefote, representing Great Britain, declared that the establishment of a permanent international tribunal of arbitration was the duty devolving upon the conference, and a great majority of the delegates undoubtedly felt that such a tribunal would be "a mighty power making for the cause of right and justice throughout the world." M. Bourgeois, speaking for France, declared that it would "incessantly remind the spirit of all peoples by a conspicuous and respected sign, of the superior ideas of right and humanity," and that such a tribunal might well be "a mighty instrument toward the solemn establishment of the sentiment of justice in the world \* \* \* for the good of all peoples and for the progress of humanity."

Seeking these high aims, the powers represented at the conference, including, as has already been stated, Great Britain, Germany, and Italy, but excluding Venezuela, proclaimed to the world that they had agreed, among other things, as follows: "With a view to obviating, as far as possible, recourse to force in the relations between states, the signatory powers agree to use their best efforts to insure the pacific settlement of international differences."

The signatory powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form: In case of a serious difference, endangering the peace, the states at variance shall each choose a power to which they intrust the mission of entering into direct communication with the power chosen on the other side, with the object of preventing the rupture of pacific relations. During the period of this mandate, the term of which, unless otherwise stipulated, can not exceed thirty days, the states in conflict shall cease from all direct communication on the subject of the dispute, which is regarded as having been referred exclusively to the mediating powers, which shall use their best efforts to settle the controversy.

The conference then declared: "International arbitration has for its object the determination of controversies between states by judges of their own choice, upon the basis of respect for law."

In questions of a judicial character, arbitration is recognized by the signatory powers as the most efficacious and at the same time the most equitable method of deciding controversies which have not been settled by diplomatic methods.

With the object of facilitating an immediate recourse to arbitration for international differences which could not be settled by diplomatic methods, the signatory powers undertake to organize a permanent court of arbitration, accessible at all times.

Within three months following the ratification of the present act, each signatory power shall select not more than four persons of recognized competence in

questions of international law, enjoying the highest moral reputation, and disposed to accept the duties of arbitrator. \* \* \* The members of the court shall be appointed for a term of six years, and their appointment may be renewed.

The court of arbitration shall ordinarily sit at The Hague.

When this great pact of peace had been signed, M. de Staal, in closing the conference, said: "In the course of years I have seen the gradual growth and influence of moral ideas in political relations. This influence has to-day attained a memorable stage. \* \* \* Gentlemen, the first step is taken. Let us unite our efforts and profit from experience. The good seed is sown. Let us await the harvest. As for me, having come to the end of my career and the decline of my life, I consider it a supreme consolation to see the opening of new perspectives for the good of humanity, and to be able to look forward into the bright vistas of the future." In those vistas one could see all independent states standing upon a platform of absolute equality.

Great Britain, Germany, and Italy associated themselves with the other signatory powers in adhering to the foregoing declarations in favor of mediation, of arbitration, and of peace which were signed July 29, 1899, and thus stood committed, by their voluntary action, to giving practical effect, whenever opportunity offered, to those objects in their relations with all other nations. It remains to be considered how they met the solemn obligations they had thus assumed in the face of the world, in their subsequent dealings with Venezuela, for which dealings they now ask an award of merit from this tribunal.

It may, we suppose, be taken for granted that such a seizing and sinking of her small vessels of war, such a blockade of her ports, and such a bombardment of her ports as these great powers practiced toward Venezuela constituted a state of war between them and her. It is not necessary, for the purpose of this discussion, to consider the question of the possibility of a pacific blockade, as all the authorities upon international law agree that such a blockade must not extend to interference with the rights of neutrals to have undisputed access to the ports in question, but in this case the notification to neutral powers of the existence of the blockade and the purpose to enforce it as against them, as well as the actual seizing and sinking of armed vessels and firing upon one of the forts, left Mr. Balfour, the prime minister of Great Britain, no other course but to declare, as he did in the House of Commons, December 18, 1902, that "of course a state of war existed between Great Britain and Venezuela, as you could not have a blockade effective against other nations except when a state of war existed." Therefore, in using the term "war," as will be convenient and necessary in the course of this discussion, we do not mean to give any undue extension to the term, but to limit it to the proceedings actually taken by the allies in the present case.

In considering the diplomatic correspondence between these great allied powers and Venezuela which preceded the war, it may prove quite as useful to confine such consideration to the diplomatic correspondence between Great Britain and Venezuela as it would be to include the diplomatic correspondence between Germany and Italy with Venezuela. As those three great powers chose voluntarily to associate themselves in alliance in conducting the war, there can be no injustice in holding them all equally responsible before this court for the acts of each party to the alliance, nor can preferential treatment be accorded to one of the others unless accorded to all; nor is it to be supposed that the action of Great Britain toward Venezuela would be less considerate or less imbued with the principles of justice, or show any less regard for the declarations of the peace conference than would the action of either of her allies. Of course, if it should hereafter appear that in thus selecting the action of Great Britain as a proper test of the propriety of the action of Germany and Italy any moral injustice is in danger of being suffered by either of these last-named nations, abundant care will be taken, as it ought to be taken, that no such wrong is perpetrated, notwithstanding that as voluntary allies they must all stand or fall together. This tribunal may be relied upon to take such care, and our learned opponents are in no danger of allowing such injustice to be done; but we also, in our measure, will be very glad to assist both the tribunal and our learned opponents in the prevention of any such unintended result.

In the preparation of this brief we will therefore confine ourselves in that respect to Great Britain's statement of the controversies between her and Venezuela which culminated in the war of the allies upon Venezuela. Assuming, therefore, until it otherwise appears, that the line of conduct followed, and the temper exhibited by Great Britain in the controversy which led to the war may be fairly held to illustrate the conduct and temper of Germany and Italy at the same period, and recognizing that as voluntary allies the acts of each are binding upon all, a brief summary of the diplomatic correspondence between Great Britain and Venezuela is, it seems to us, of the greatest importance in assisting this tribunal to decide whether or not Venezuela is justified in her contention that all her creditor nations shall be treated upon a basis of absolute equality.

The pact of peace was signed, as has already been stated, July 29, 1899, and on February 24, 1901, the governor of Trinidad reported an alleged outrage by Venezuela upon subjects of Great Britain. In dealing with this question it must be remembered that the island of Trinidad is a British dependency just north of the mouth of the Orinoco, and that two horns of the island almost reach to the Venezuelan coast. This island has long been believed by the Government of Venezuela and by its inhabitants to be a refuge for persons en-

gaged in an effort to overthrow the Government of Venezuela, and that such revolutionists have never been, to speak mildly, unwelcome to the authorities of the island of Trinidad. Then, too, an equally widespread belief exists that Trinidad is the basis of constant and frequently successful efforts from which to carry on smuggling by introducing articles into Venezuela without paying the duties imposed by that Government upon such imports. There has, therefore, inevitably grown up a great bitterness of feeling on the part of the Government of Venezuela toward the British authorities of the island of Trinidad, which seems to be even more than reciprocated by the authorities of Trinidad. This feeling was sure to be greatly accentuated whenever Venezuela was engaged in arduous efforts to suppress a serious rebellion, because her Government would believe that her efforts at such suppression were greatly hindered by the more or less direct assistance rendered the insurgents from the island of Trinidad; and that, being in urgent need of all customs dues, she was constantly being defrauded by the smuggling carried on from Trinidad to her coasts. To add to these natural sources of irritation, suspicion, and bad feeling, a small uninhabited island, called Patos, lying between Trinidad and Venezuela, affords a very convenient halfway hiding ground both for revolutionists and for smugglers passing between Trinidad and Venezuela, and this condition, so favorable to controversy, is greatly accentuated by the fact that the ownership of this small island is and has long been in dispute, both Venezuela and Great Britain claiming to own it.

Another consideration which it seems to us should have persuaded Great Britain to be forbearing and considerate at this juncture and to at once propose either mediation or arbitration is the well-known fact that the dispute as to the true boundary between Venezuela and British Guiana had been a subject of long and bitter controversy, Venezuela constantly begging for arbitration of the question and Great Britain refusing it, while steadily enlarging her encroachments; and at last, upon the peremptory demand of the United States, Great Britain assented to an arbitration. Such a proceeding and the compromise award which followed it were sure to leave a sense of great injustice behind them on the part of a power too weak to secure equality of treatment.

In such a situation the wise words of M. de Staal recur with ever-increasing force:

Diplomacy, as we all know, has for its object the prevention and the appeasement of conflicts between states, the softening of rivalries, the conciliation of interests, the clearing up of misunderstandings, and the substitution of harmony for discord.

Such a situation, it is needless to point out, even with the best intentions to avoid controversy on both sides, would almost certainly



provoke it and would call for very great consideration in dealing with any difficulties which arose from it. We do not wish to unduly press the consideration of the vast inequality of strength between Great Britain and Venezuela, but it certainly is a proper element in considering what her line of conduct should have been. She is one of the most powerful nations of the earth, and she was confronting one of the weakest nations, then torn by internal commotion and needing every particle of strength she possessed and every dollar of revenue she could collect at her ports to maintain her own existence. This disparity in strength is clearly shown in the Statesman's Year-Book for 1903, an accepted authority in such matters, which details the great and efficient standing army of Great Britain, as well as her supreme control of the seas by her vast navy, while it reports that the army of Venezuela consists of 9,000 men, and her navy of 3 steamers, 2 sailing vessels, and some small gunboats.

The propriety of great forbearance in pressing doubtful claims by so powerful a nation against a nation so incapable of resistance ought, it would seem, to have been always recognized, even before the high-sounding proclamation of the peace conference. Indeed, an English writer in *The Nineteenth Century and After* for April, 1903, an English magazine of high character, says, speaking of the intervention of European nations in the affairs of the South American Republics:

To justify such intervention, it would seem to be the duty of foreign states to observe certain rules which one and all of them have in the past been inclined to disregard, \* \* \* such as refusing to support by diplomatic action, and in the last resort by force, claims which, *prima facie*, are plausible, but which have never been examined thoroughly, or to press to the utmost demands which may turn out, and which, according to the experience of many mixed commissions do turn out, to be bad, or much exaggerated, and which are in the end settled for a small sum.

The writer adds that "before such interference the European nations ought to do away with all pretext for the charges, true or false, persistently made, that much smuggling has in past times been carried on." The writer then suggests that mixed commissions should be organized, to which such claims should be automatically referred, as they would help to "propitiate national pride and remove a grievance, for such the constant pressure from the outside is regarded.

Such, it seems to us, are the wise and considerate methods which a mighty nation, just having signed the conclusions of the peace conference, might reasonably be expected to pursue in dealing with a weak and distracted people struggling to preserve their government from overthrow by revolutionary leaders seeking to destroy it; and it is not too much to declare that the course actually pursued was in

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the greatest possible contrast to the course which was reasonably to have been expected.

Before proceeding to analyze the controversies over disputed claims which eventuated in war, we wish to call the attention of this tribunal, with all the emphasis possible, to the fact that there will be found in all these controversies and disputes no word from this powerful and mighty nation proposing to this weak and defenseless sister in the family of nations mediation of any kind or character whatever, whether of the class declared to be desirable by the conference, the conclusions of which it had just signed, or not; no friendly word suggesting that these matters of controversy were proper subjects of arbitration; no friendly word intimating that the blessings of peace between Great Britain and Venezuela were of incalculable importance to the weaker power; no consideration of any kind for the weakness of Venezuela, and no allowance of any kind for the fact of the absorption of all her possible strength and of all her possible resources in the suppression of the insurrection then raging in the country. Indeed, there will be found in this whole dreary record nothing but harsh demand followed by harsher demand, and harsh threat followed by harsher threat. One asks in vain, in reading it, from the first word to the last, where does there breathe, in all its pages, the least resemblance to the spirit of the peace conference which constituted this tribunal? Where is there to be found the slightest allusion to the solemn declaration to which Great Britain had just affixed her name and given her approval? The answer must be that there is not anywhere to be found in the whole of the demands and threats of Great Britain the slightest sign of a desire for mediation or arbitration or of any recognition of the troubles and weakness of Venezuela as contrasted with the overwhelming power and strength of her great adversary.

While in the course of this statement it has been necessary to point out the failure of the British Government to offer mediation or arbitration to Venezuela, the fact has not been overlooked that the German Government, on July 16, 1901, did make an offer of arbitration to the Government of Venezuela. The German Government well knew that Venezuela at this time was wholly engrossed in her efforts to suppress the Matos insurrection; and there was an interruption of all correspondence, apparently, for six months, when the alliance between Great Britain and Germany was formed, the fleets dispatched and ultimatums delivered, and the war upon Venezuela inaugurated. If the alliance had been formed to make joint proffers in November, 1901, of the offer Germany alone had made in July for arbitration, it is as reasonably certain as anything can be that the offer would have been accepted. But the alliance was



not an alliance for mediation or arbitration, but for war. Yet there can be no doubt of the fact, and instances can be cited to show, that collective pressure and firm insistence would have brought about arbitration or settlement, as it did when Belgium, England, France, Germany, and Italy, on February 26, 1902, resorted to collective diplomatic action against the Republic of Guatemala and obtained a peaceable adjustment of the claims of their subjects. (For. Rel., U. S., 1902, pp. 569-580.)

It was the principle of equality of treatment that guided the Venezuelan Government during all its negotiations with the creditor powers, at Caracas and at Washington. On February 13, 1903, Venezuela signed separate protocols for the reference to mixed commissions of the claims of the allied powers, subject to reservations of preferential treatment of certain claims, to which Venezuela submitted through force. On the 17th day of February, the United States and Venezuela signed a protocol for the submission of all unsettled claims to a mixed commission. This protocol contained provisions which simplified the procedure and the questions to be decided, and prescribed the currency in which the awards should be payable. It was intended to remove from the field of discussion any of the troublesome questions which might naturally arise from the omissions of the British, German, and Italian protocols. After the United States protocol had been signed the allied powers requested of Mr. Bowen the same treatment, and the plenipotentiary of Venezuela accorded the same treatment by making new protocols with the allied powers.

We labor, of course, in preparing this brief, under the disadvantage of not knowing the point of view of our learned opponents, and we appreciate how their learning and subtlety may well succeed in presenting considerations to this court which we can not foresee; but exercising the best judgment we possess upon the situation as it is now presented to us, we confess ourselves wholly unable to understand how it can be seriously argued, considering the character of this tribunal, and the history of its creation, that the manner pursued by the allied powers in dealing with the problems which were then confronting them, can commend itself so highly to your approval as to justify you in declaring that it distinctly merits an affirmative preference over the policy pursued by the other creditor nations of Venezuela, which did not see their way clear to resort to war, especially in view of the then distracted and impoverished condition of Venezuela, in order to enforce the payment of their claims. For it is impossible, by any learning, or by any subtlety, or by any ability, however great, to confuse the question now presented for decision. That question can never be other than this plain and simple one: Has the conduct of the allied powers in making war upon Venezuela

when they did, and in view of all the circumstances then existing, so merited the approval of this tribunal that it will accord them preferential treatment in the payment of the claims presented by them against that country, over the claims presented by her other creditor nations, which did not under the circumstances then existing, see their way to make war upon her?

It is not enough that the conduct of the allies in making war upon Venezuela was equally meritorious with the policy pursued by the other creditor nations in abstaining from war and in seeking to collect the claims presented by them by peaceful methods. Before you can award preferential treatment to their claims, you must declare their conduct to be more meritorious than the conduct of those nations which abstained from making war; for equality of treatment is the rule and preferential treatment can only be accorded as an award of merit.

It is, of course, to be greatly regretted that Venezuela did not repeat the same requests for arbitration she had so persistently made for so many years in the boundary dispute. That would have been the wisest course for her to pursue, but she is not here asking this court to decree that her conduct in failing to do so is meritorious, which is what Great Britain is asking. So far from being meritorious her conduct in so abstaining was very unwise; but she is able to offer as excuses, though not as justifications, for so abstaining, the history of her fruitless beseechings for arbitration in the boundary dispute, the refusal to permit her to name a single arbitrator when arbitration was extorted from Great Britain by the United States, and the all-important fact that her Government was required to devote all its attention and all its energy to terminate the formidable insurrection against the constituted authorities then distracting and devastating the country. Notwithstanding these persuasive excuses for her not suggesting arbitration, we do not for a moment contend that they would entitle her to claim, as Great Britain is claiming, that failure to request mediation or arbitration in the hope of averting war would entitle her to an award of merit from this tribunal.

Then, too, it must be remembered that a weak American Republic is always alarmed and suspicious when a great European power seems to be seeking more or less plausible grounds for making war upon her. She knows that voices are still to be heard advocating the conquest and colonization of these weak American Republics by the great powers of Europe; and it will suffice, for the purposes of this argument, to place this court in possession of such views expressed by two recent writers upon the subject.

The first article is by an English writer in the English magazine of high character already mentioned, the *Nineteenth Century and After*, for April, 1903. The writer supposes that the next great war

will be caused by the conflicting interests of peoples seeking outlets in some distant quarter, this being the new situation with which we commence the twentieth century. He says:

Although the expansion of Europe is no new thing, the rapidity with which the vast African continent has been annexed is probably one of the most striking events in the history of mankind, and will always remain as the most permanent monument to European energy in the nineteenth century. Great tracts of country which, within the memory of living men, were as desolate and inaccessible as the poles, great areas which even at the present day no white man has traversed, are now the possessions of Europe. England, France, Germany, Belgium have with varying successes and in different degrees prosecuted their conquests, \* \* \* so that there is hardly a territory \* \* \* which does not, at least in name and upon the map, acknowledge the supremacy of the European conqueror or colonizing power. The work of government, of colonization, and the opening of the country to commerce remains, but the days of empire building, in the sense of acquiring of new territory, are practically at an end, \* \* \* and to study the possibilities of the future \* \* \* we must remember that the African territories of any Continental power are either insufficient or unsuited to colonization, and keep before our eyes the great incentive which has already produced the extraordinarily rapid expansion of Europe. The partition of Africa has been brought about not solely with the desire of present empire, but with the knowledge of the powers that what they left would be seized upon by others, and that, once secured, it would not again be offered in the market; and if this view was for a time neglected, the events of recent years have been an object lesson of the results of this neglect. The African market is now practically closed. \* \* \* Those powers which, within the next few decades, have not established such colonies as they may require elsewhere must face this struggle or go without. \* \* \*

A war of conquest, for the purpose of colonization, is, of course, impossible in Europe, and thus it appears that although here and there some savage or decaying state may be added to the possessions of the western powers, there is no likelihood of any repetition of the recent events in Africa in any of the three continents of the Old World.

To argue that as the difficulties of colonial expansion are thus increased, the desire for such expansion is likely to abate, is to overlook the cause of this extraordinary movement. As the supply of unoccupied territory suitable for colonizing decreases, it will become increasingly apparent, not only that if an empire is to be founded, no time is to be lost, but that the price at which a people can afford to acquire such territory has risen. The increasing pressure of European populations, the race for trade, and the natural desire for national aggrandizement must be powerful factors, and the policy of "now or never" must soon be the watchword of several European chancelleries. We have seen that the Old World offers few attractions. There remains only the New.

If the New World is indeed to be the center of interest and the center of expansion during the twentieth century, it may be worth while to review the present position and examine some portions of the American continent. \* \* \*

First, what are the conditions which the European power, seeking for new colonies, would desire? The territory must have a healthy climate, in which the colonists are to live and multiply. The land must be fertile and its inhabitants should not offer too serious a resistance or continue their resistance for a protracted period. \* \* \* As the demand for expansion increases, as it inevitably must, it is probable that other nations will be willing to undertake far heavier tasks, and if the countries which they purpose to possess are not

only suitable for colonization, but of extraordinary richness and importance, they would consider it worth their while to make very heavy sacrifices. Such countries, which, \* \* \* are practically at the mercy of any enterprising nation, are to be found in Central America, and include the Republics of San Salvador, Honduras, Nicaragua, and Costa Rica. The total area of these four Republics is some 120,000 square miles, or about three times the size of the Orange River Colony [which has so recently been conquered and annexed by Great Britain] whilst the population, of which a great proportion is Indian or half-breed, is under two millions. The climate varies from tropical heat upon the narrow belt of low coast line, through all variations of temperature to the mild and healthy uplands of the interior, so that practically all kinds of agriculture can be carried on. The mineral wealth of these almost entirely undeveloped countries is great and varied, and includes gold, silver, iron, coal, copper, platinum, zinc, tin, and quicksilver.

Founded with high hopes of greatness and prosperity, released from the hold of Spain, and supported by enthusiastic sentiment, the history of these Republics is one of squalid discontent and failure. Their idle populations have neglected every opportunity of profit, so that the agricultural and mineral wealth of their lands remains entirely untouched and undeveloped. The corruption and inefficiency of their government have imposed a grievous burden on the foreign trader, and the perpetual revolutions in which the inhabitants engage, and which still further retard the progress of their country, are a sign rather of the degeneracy of the natives than an indication of a desire for improvement. That it is possible that a new order of government may arise is shown by the comparative stability of Guatemala and the present prosperity and tranquillity of Mexico, but no man has yet arisen to perform these good offices for the four remaining Republics, and we have no indication that such a time is at hand. To visit these countries is to despair of any internal regeneration, and as the traveler listens to the details of their politics, views the anarchy which follows upon the sudden changes of government, or, crossing their borders, watches the ex-presidents of the various States, the greater part of whom have both gained and lost their posts amid bloodshed and intrigue, and who, under the friendly flag of a neighbor, are awaiting another favorable opportunity for adventure, he feels that a condition of affairs so savage and preposterous can not continue for long, and that the time must soon come when some stronger power must step in and open the produce of these rich lands for the benefit of mankind. If it be true that the supply of available territory is now nearly exhausted, and that the need for immediate expansion is great, if the nations are to overflow under their own flags in foreign parts, we have here a territory which, in so far as we have at present examined the problem, presents great temptations; and it may even be hazarded that these temptations do not stop only at Central America.

The actual conquest and administration of Central America present no great difficulty to any nation willing to undertake the trouble and expense, but below the Isthmus of Panama there remains a vast and almost equally derelict territory, of equal richness, which, although more difficult to subdue, is so vastly larger that it might well repay a war. The territories of Venezuela appear to have, at least in our imagination at the moment, a peculiar attraction for continental empire builders; and when we remember that the combined Republics of Venezuela and Colombia are about eighteen times the size of the Orange River Colony (lately conquered and annexed as before stated); that, although presenting a serious military problem to an invader, the governments of these countries are but little superior to those of Central America; that the

rural inhabitants of the interior are very little civilized, and that the insolvency of Venezuela is a perpetual irritant to its creditors, it is hardly too much to suppose that the possibility of carving a colony out of this immense and fertile area may be sometimes considered as feasible. \* \* \* As the problem of population begins to press upon Europe some outlet must be found, and unless the United States throws aside its present policy of protection without responsibility \* \* \* It is certain that some power will ultimately seize upon this last undeveloped continent. In either case, equatorial America must be to the twentieth century what Africa was to the nineteenth.

The other voice is American, and speaks in an article signed "An American Business Man," in the North American Review, an American publication also of high character, for April, 1903. This voice is far more strident and violent, but it substantially follows the same lines as the English writer already quoted. This latter writer asserts that as soon as an intelligent observer is on Latin-American soil he discovers that—

He is outside the bounds of civilization; for every move he makes he must first obtain a passport from the military jefe; everywhere he goes he is confronted by a soldier or policeman, who demand his name and his business. If he sends a telegram, he must first get the approval of the Government censor; if he writes a letter, one hundred chances to one it is opened and read by the postal authorities before it is sent. If he walks along the sidewalk, he knows not what moment a soldier will bring him to a halt with a "quien viva" and a Mauser leveled at him and an order that he walk in the street. He soon finds out that he himself is liable to be locked up in jail on any trivial pretext or none at all. It does not matter what may be his social or business standing; if he makes protest at the acts of these tyrants, he may be expelled from the country without redress or incarcerated in a jail. If he appeals to the American consul for aid, the chances are seven to one that the mouth of that dignitary has long been stopped by Government concessions, or that he is an actual party to the injuries. But our traveler has by this time only commenced his initiation. He has only learned what any intelligent man would certainly ascertain to be true within forty-eight hours after setting foot on the soil of any Latin-American country, with the exception of Mexico, Chile, and the Argentine Republic.

It does not take the observer long to ascertain that there is not in any of these countries such a thing as a legally constituted government. The constitutions prescribe that elections shall be held at stated periods and in a certain manner for the election of the president and other officials of the government, but no elections are ever held. Occasionally a newspaper correspondent, some disciple of Mark Twain, as a huge joke writes about an election in Venezuela or Colombia, the same as he might about a sea serpent, but not within the memory of any living man has there been a real election in those countries. \* \* \* The constitutions provide that the laws shall be passed by the legislatures of the several states or by the congress for the federal union, yet ninety-five laws out of every hundred are the edicts of the dictator, pure and simple, and no pretense is made that any legislative body ever read them, let alone passed them or engrossed them. \* \* \* It would appear that the respective dictators and governments, for all seem to be alike, spend their odd moments thinking up schemes for robbing the people, and keep their typewriters busy in formulating these into decretas, which their courts are obliged to interpret as law, and which in fact form the law and the only law that there is.



It may be asked whether the travesty on government herein described is not abnormal and temporary. The reply is that this condition of anarchy, for it is nothing else, is the plain, normal, and ordinary condition of Venezuela and Colombia and most of the other Latin-American countries ever since Spain lost its dominion over them, with the exception of brief intervals when some dictator more powerful than the rest, has succeeded, by force of arms, in maintaining his authority. \* \* \*

The people of those countries, and they are all practically the same, aside from the foreigners, naturally fall into four groups:

(1) The Spaniards of pure blood, who do not form perhaps more than 10 per cent of the total population. These people as a class are cultured, highly civilized, religious, hospitable, many of them of literary attainments and scholarly pursuits. This class contains many families of distinction. They do not take any part in politics nor desire positions under the Government. They are among the chief sufferers from the numerous predatory excursions both of the Government troops and of the revolutionists. \* \* \* This class fervently desires and earnestly hopes that some foreign nation will eventually take hold of these countries and establish law, order, and civilization.

(2) This class comprises the peons, who do farming, the laboring men, the small traders, cattlemen, fishermen, woodsmen, mechanics, etc., or perhaps more than 80 per cent of the total population. \* \* \* In habits these people are simple; in manners, polite and hospitable, and but little drunkenness and crime are found among them. They are the most docile and easily managed people in the world.

(3) This class comprises the pure Indians, who are comparatively few in number, and unimportant to this discussion.

(4) This is the ruling class. It may not comprise more than 10 per cent of the total population in any Latin-American country, but it makes all the trouble, is responsible for the rapine, bloodshed, murders, revolutions, and anarchy which have disgraced Latin-America. This class as a rule represents a mixture of Spanish and Indian blood, oftentimes has a heavy sprinkling of negro and sometimes of other elements. \* \* \* As a rule, this class is composed of adventurers, ambitious, and unprincipled military men, many outright criminals, others whose lives have been devoted to anarchy and to the machinations for which these countries are noted; and, taken altogether, it is the most aggressive, pretentious, good-for-nothing, nondescript, villainous, and treacherous set of semibanditti which was ever organized on the face of the earth, held together by the cohesive power of public plunder and by the ambition to tyrannize over others. Out of this class the so-called "governments" of these countries are formed. One faction of it is always in power, looting the public funds, living in oriental splendor off the forced contributions from foreign merchants or off the receipts of custom-houses, running things generally in that high and mighty way which only a Latin-American can emulate, while the other faction is trying to get into power so that it may have the good things; and there is where the revolutions originate. There is not enough for all. Foreign merchants have been plundered until they have become few in number. Great foreign syndicates under Guzman Blanco loaned millions to the Government, nearly all of it to be stolen by corrupt officials, and they invested other millions in railroads and other enterprises, most of which have been ruined or confiscated by one military despot or another. Now the influx of foreign capital is small, and the plea for these dictators contains so few plums that it behooves them to fight royally over what few there are. \* \* \*

South America from one end to the other is strewn with the wrecks of American and European investments. \* \* \*

If the German houses were taken out of Venezuela and Colombia, those countries would become infinitely more barbarous than the negroes in the center of Africa or the North American Indians. Nothing except capital invested in those countries by American, English, and German business men stands between them and the utter blackness of barbarism. \* \* \* Rich in resources beyond the dreams of avarice, its tinted mountains filled with priceless gems and precious metals of untold worth, its vast prairies and mighty forests one unending panorama of nature's most stupendous effort, its shores indented by a thousand harbors wherein might ride secure the commerce of the world, a land of beauty comparable to no other in its myriad pictures formed by nature's whims; capable of containing the population of the earth and housing it in luxury and splendor, this queen of continents is held in slavery and blood, in the blackness of intrigue and hate, at the mercy of brutal violence, perfidy, and anarchy.

To talk about the United States becoming involved in war with Germany, as many newspapers have done, because of the Venezuelan affair, is utterly indefensible. Such a war would be the mightiest crime of all history, in which the United States would be in eternal and unextenuated wrong. No higher, nobler, grander service could be done to humanity, to the Latin-Americans themselves, and to civilization for all time, than for Germany, England, and the United States to take joint possession and control of all Latin-American countries, except the three previously mentioned, and govern them in the same manner as these nations govern their dependencies. Until this is done there will be no peace in the Western Hemisphere.

Just as surely as leprosy permeates the whole body and breaks out again, although some local ulcer may have been healed, just so certainly will the anarchy of Venezuela, Colombia, and the other Latin-American countries constitute an everlasting menace to the peace of the world until such time as civilization may rise in its might and put an end to it. \* \* \* It is inconceivable that any respectable American, cognizant of the facts, could do other than applaud the German Emperor, who is doing so much toward making it possible for a white man to exist in those countries without the necessity of having a squadron of war ships or an army at hand to protect him from plunder or assassination. I only voice the sentiments of every American business man who has ever invested a dollar in those countries when I fervently say: "More power to his strong right arm."

There can, we suppose, be no doubt that the views expressed in these two articles are shared by large numbers of enterprising and ardent persons unwilling to endeavor to obtain wealth by the slow and old-fashioned methods which prevail in lands—

Of old and just renown,  
Where freedom broadens slowly down  
From precedent to precedent.

Like the Cortez and Pizarros, like the Raleighs and the Drakes of an earlier day, they prefer to appropriate by force the wealth of less civilized and weaker lands, and they regard it as a hardship that the more settled governments of the world will not reduce the whole earth to absolute security for titles to mines, however corruptly obtained, for loans, however corruptly made, and for concessions, however corruptly secured.



Very many nations have recently been engaged in pursuing a policy which ought to be regarded, it seems to us, as sufficiently adventurous to satisfy the most ardent and progressive spirits. The vast and fertile territory of the basin of the Kongo has been parceled out among the nations of Europe; the exhaustless mines and precious stones in South Africa and the wide domain of Rhodesia have been appropriated by Great Britain; the Sandwich Islands, Porto Rico, and the Philippines have come under the control of the United States; and Germany possesses provinces in East Africa and in China; while France has secured the dependencies of Tonkin and of Algiers. Upon the American continent France still possesses a portion of Guiana, the Netherlands possess another portion, and Great Britain possesses the remainder, including the large increase of territory awarded by the arbitration with Venezuela, already mentioned. Great Britain also possesses islands in the West Indies and the vast Dominion of Canada. But all these possessions, it must never be forgotten, have been already secured, and it is therefore permitted to us to argue that a new era may now safely and conservatively be inaugurated in the relations of strong states toward weaker nations, so that the world may be now regarded as standing at the parting of the ways. Either the old predatory policy which permitted each nation to take possession of the territory of any weaker power, disguising its conquests under whatever misleading phraseology it chose, is to be continued, or the opposite policy is hereafter to be followed—that of endeavoring to introduce greater order, better laws, and a wiser and more stable civilization by the peaceful methods of immigration and commercial intercourse and all the other manifold agencies of modern civilization, trusting to the slow but sure processes of time to perform for the other weak American republics the beneficent work which it is admitted has been thus performed in Mexico, in Brazil, in Chile, and the Argentine Republic; and there are certainly several other of these republics rapidly assuming the same creditable condition.

The new era, if inaugurated, will unquestionably be the result of the historic conference held in 1899 in this historic city, and it will therefore be seen that the statement that the creation of this tribunal may prove to be an epoch-making event is without the slightest trace of exaggeration. The dignity which shall hereafter attach to it, and the extent of the importance and far-reaching character of its decisions must, of course, depend upon the manner in which it meets the high expectations of the statesmen, the diplomatists, the jurists, and the soldiers who created it; but its mere creation, it can safely be said, was in itself an event of the first importance, for it emphasized as nothing else could probably have done the fact that adequate notice was thereby served upon all the nations of the earth that their rela-

tions with each other, so far as they were controlled by international law, had indeed at last reached the parting of the ways. The past was behind them, with no purpose to indulge in unnecessary criticism of methods, and certainly with no desire to attempt to unsettle anything which had been settled by the might of the great nations in war. The civilized world is accepted just as it is now constituted, but henceforth the relations of states to each other are to be placed as far as possible under the protection of the solemn declarations made July 29, 1899, by the 26 nations which were believed to be worthy, by the settled character of their governments and the advanced stage of civilization which they had reached, to assist in framing the new principles which were thereafter to become integral and indispensable parts of international law. The enforcement of the international law of the future as thus amplified, purified, and elevated by the introduction into it of the new principles thus announced was confided to this tribunal, and as the Latin-American republics, as soon as could be reasonably done, announced their adhesion to those principles and their desire to avail themselves of the controlling and regulating jurisdiction of this high court of the nations, it may be assumed, speaking in general terms, that the whole civilized world has by this time—September 1, 1903—united in the acceptance of the declarations of the peace conference and in declaring their readiness to submit their controversies to your decision. To declare, therefore, that the creation of this tribunal was an epoch-making event in the history of mankind is shown to be entirely justifiable.

The alarm felt by Venezuela, and which doubtless diminished her hopes that she would be allowed any form of mediation or arbitration, was largely due to the persuasive arguments heretofore set forth in favor of the conquest and colonization of Central and South America by the greater European powers; for these arguments only gave public expression to the objects the Latin-American countries have long believed to be cherished by some of those powers. The constant encroachments of Great Britain upon the territory of Venezuela, persisted in for more than fifty years, ended, as they well knew, in securing for her a very substantial extension of her original boundary. The empire established in Mexico upon the overthrow of the republic by the armies of Napoleon III had, as they well knew, itself been overthrown only by the might of the United States. The difficulties which Brazil encountered in freeing herself from a king allied to the reigning house of Portugal was still fresh in their memories. When, therefore, they heard from every quarter of the ever-growing navies of the great European powers, and witnessed how Germany suddenly descended upon and appropriated an important seaport of China, with its adjacent territory, and learned of the demands of many influential organs of opinion in Germany for new and greater

colonies in other quarters of the globe, their apprehensions for their own safety were naturally greatly excited.

The grounds for these apprehensions are admirably set forth in a dispatch from Mr. Drago, the minister of foreign affairs of the Argentine Republic, to its minister at Washington, December 29, 1902; and the general purport of this communication merits careful consideration by every European power having commercial or other relations with any Central or South American republic. Speaking of the alleged injuries which the subjects of the claimant nations are said to have suffered during the revolutions and wars which have recently taken place in the territory of Venezuela, and also of the fact that certain payments on account of the external debt of that State have not been met at the time stipulated for meeting them, Mr. Drago adds:

It is to be noticed in the first instance \* \* \* that the capitalist who supplies any money to a foreign state always takes into consideration the resources of the country and the more or less probability that the obligations contracted will be fulfilled without difficulty. Because of this, every government obtains different credit, in view of its grade of civilization and culture and its conduct of affairs, and these circumstances are measured and weighed before the contracting of any loan, and serve to make its conditions more or less onerous, according to the exact data which on such subjects are kept on file by all bankers. Besides, the creditor knows that he contracts with a sovereign entity, and it is the inherent condition of all sovereignty that proceedings against it to collect its alleged debts can not be entered into or carried out without its consent, as that form of demand of payment would compromise its very existence, making its independence to disappear. Among the fundamental principles of international law that mankind has sanctioned, one of the most precious is the one which determines that all states, whatever be the force they may dispose of, are entities *de jure*, perfectly equal among themselves, and reciprocally deserving, for that reason, the same amount of consideration and respect.

An acknowledgment of the debt and the liquidation of its amount may be made and should be made by the nation, without injury to its primary rights as a sovereign entity, but the compulsory and immediate demand of payment at a given moment, by means of force, would not produce other than the ruin of the weaker nations and the absorption of their governments, together with all their inherent faculties, by the powerful nations of the earth. The illustrious Hamilton has said that the contracts between a nation and private individuals are binding according to the conscience of the sovereign, and can not be the object of compulsive force; they do not confer any right whatever for action outside of the sovereign will. An acknowledgment of a public debt, and fixing the obligation of paying it, is not a declaration destitute of value because recovery is not to be effected by means of violence. A state maintains and upholds its duty and capacity to pay its debts, and sooner or later the obscure conditions resolve themselves, the resources augment, the operations of equity and justice prevail, and the most protracted obligations are met and satisfied. Therefore the judgment that sets forth an obligation to pay the debt, be it passed by the courts of the nation or by an arbitral tribunal that expresses a permanent desire of justice as the fundamental basis for the political relations of nations,

constitutes an indisputable title which can not be compared for value with the uncertain right of one whose credits are not acknowledged, and who finds himself forced to recur to compulsive action as a means of obtaining settlement. As these sentiments of justice, of loyalty, and honor are the ones that animate the Argentine people and have inspired at all times its policy, \* \* \* it has felt alarmed on learning that the failure to meet the service of the public debt of Venezuela has been assigned as one of the causes which have led to the seizure of her fleet and the bombardment of one of her ports, and a war blockade rigorously established along her coasts. If these proceedings were to be definitely adopted as a precedent they would undermine alike the security and the peace of all the countries on this side of America.

The recovery of debts by military methods supposes a territorial occupation to render it effective, and a territorial occupation signifies the suppression over the sphere of such occupation of the government of the country wherein it is extended.

Such a condition contradicts visibly the principles oftentimes proclaimed by the nations of America and especially the Monroe doctrine, upheld and defended at all times with so much zeal by the United States, a doctrine to which the Argentine Republic before this has solemnly adhered.

Among the principles enunciated by the memorable message of President Monroe of December 22, 1823, there are two great declarations which especially refer to these Republics, viz: "The American continents by the independent condition which they have assumed and maintained are henceforth not to be considered as subjects for future colonization by any European power; and acknowledged as has been the independence of the governments of America we could not view any interposition for the purpose of oppressing them or controlling in any other manner their destiny by any European power in any other light than as a manifestation of an unfriendly disposition toward the United States."

In these later days, however, there has been a marked tendency amongst European nations to signal out these countries as an ample field for future territorial extensions. Great thinkers have insinuated the convenience of directing toward this end the great efforts which the principal European powers have applied to the conquest of barren regions with inclement climate in the most remote borders of the world. Many are the European writers who point out the territories of Central and South America, with their great wealth, their bright skies and propitious climate, adapted to every production, as a proper field wherein the European powers, which have already at hand the arms and implements of conquest, shall dispute the predominance in the course of the present century.

The expansive human tendency, heated thus by the suggestions of public opinion and the press, may at any moment take an aggressive turn even against the wish of the present governing classes, and it will not be denied that the most simple way of obtaining control and of suppressing local authorities by the governments of Europe is to be found by means of financial intervention, as can be shown by numerous examples. The only thing that the Argentine Republic maintains, and which she would see with great satisfaction consecrated, in view of the events that have occurred in Venezuela, by a nation such as the United States, which possesses so great authority and power, is the principle that there can not be European territorial expansion in America, or oppression of the peoples of this continent, because their unfortunate financial condition might oblige one or more of them to put off the fulfillment of its obligations; that is to say, the principle which I should like to see acknowledged is that a public debt can not give rise to the right of intervention, and much less to the occupation of the soil of any American nation by any European power.

The loss of prestige of the states that fail to meet the claims of their legitimate creditors bring about difficulties of such a character that there is no necessity for foreign intervention to aggravate the temporary calamities consequent on insolvency. The Argentine Republic might cite her own experience to prove how unnecessary armed interventions are in such cases.

The service of the English debt of 1824 was spontaneously resumed by her after an interruption of thirty years, brought about through a state of anarchy and the political complications which during that period disturbed the country, and all arrears were scrupulously paid, together with all interest, without the creditors taking any action whatever to obtain this result.

At a later period a series of events and financial embarrassments, altogether beyond the control of her administrators, placed her for a time in the condition of having to again suspend temporarily the service of her debt. Nevertheless, she had a firm, decided resolve to resume payment as soon as circumstances should permit it, and which she did in fact shortly afterwards at the cost of enormous sacrifices, but by her own free, spontaneous will and without the intervention of any foreign power; and it is to her most scrupulous, honest, and correct proceedings and her high sense of dignity and justice that the difficulties through which she has passed, instead of impairing her credit have helped to increase it in European markets. It may be stated with entire certainty that such satisfactory results would not have been obtained if the creditors had deemed it expedient to intervene in a violent manner at the period of crisis in her finances. \* \* \* Long is the road over which South American nations may yet have to travel, but they have sufficient faith and the required energy to obtain their thorough development, helping each other as they go along; and it is by this sentiment of fraternity, and by the strength that always springs up from the support of a whole people, that I address myself in compliance with instructions from His Excellency the President of the Republic, \* \* \* to the Government of the United States, expressing our appreciation of the events in the unfolding of which they are to take so important a part, in order that they may consider it as the sincere expression of the sentiments of a nation that has faith in its destinies and in those of the whole American continent, at the head of which stands the United States, realizing ideals and furnishing examples.

Now, the United States had taken abundant care at The Hague Conference to bring its attitude upon this general subject to the knowledge of all the powers there represented by its explicit declaration that nothing contained in the conventions of that conference to which it adhered should be so construed as to require the relinquishment by the United States of its traditional attitude toward purely American questions, and as to that attitude the President of the United States declared, in his message to Congress of December 3, 1901:

We do not guarantee any State against punishment, if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power.

And again, in his message of December 2, 1902:

No independent nation in America need have the slightest fear of aggression from the United States. It behooves each one to maintain order within its own borders and discharge its just obligations to foreigners. When this is done they can rest assured, be they strong or weak, they have nothing to dread from outside interference.



And when the communication on behalf of the Argentine Republic, which has just been recited, was brought to the attention of Secretary Hay, he said:

Advocating and adhering in practice in questions concerning itself to the resort of international arbitration in the settlement of controversies, not adjustable by the orderly treatment of diplomatic negotiations, the Government of the United States would always be glad to see the questions of the justice of claims by one state against another growing out of individual or national obligations, as well as guaranties for the execution of whatever award may be made, left to the decision of an impartial arbitral tribunal, before which litigating nations, weak and strong alike, may stand as equals in the eye of international law and mutual duty.

The propriety of this strong appeal by Secretary Hay for arbitration will be perfectly apparent from a review of the course pursued by the United States upon that subject for more than a hundred years.

Even as early as the close of the eighteenth century, in a treaty between the United States and Morocco, concluded in 1787, it was provided that no appeal should be made to arms until a friendly arrangement should have been proposed and rejected, and as early as 1832 the senate of Massachusetts, in the United States, declared that some mode should be established for the amicable and final adjustment of all international disputes instead of resorting to war, and a like resolution was passed by the house of representatives of that State in 1837. In 1844 the same State, and in 1852 the State of Vermont, adopted resolutions commending the idea of a convocation of congress of nations for the purpose of establishing an international tribunal for the adjustment of disputes between nations. In 1851 the Committee on Foreign Relations of the Senate of the United States declared that, in the judgment of that body, it would be proper and desirable for the Government of the United States, whenever practicable, to secure in its treaties with other nations a provision for referring to the decision of umpires all future misunderstandings that can not be satisfactorily adjusted by amicable negotiations in the first instance before a resort to hostilities should be had. Two years later the same committee suggested to the President that a stipulation should be introduced in all treaties hereafter entered into with other nations referring the adjustment of any misunderstanding or controversy to the decision of disinterested and impartial arbitrators, to be mutually chosen.

In 1872 it was proposed in the Senate of the United States that a tribunal should be established, to be clothed with such authority as to make it a complete substitute for war, declaring a refusal to abide by its judgment hostile to civilization, to the end that war may cease to be regarded as a proper form of trial between nations. And in 1874 a resolution favoring general arbitration of international disputes was passed by the House of Representatives of the United

States. In 1888 235 members of the British Parliament addressed the President and Congress of the United States urging the conclusion of a treaty of general arbitration between the two countries, and the Committee on Foreign Relations of the Senate subsequently requested the President to invite, from time to time, as fit occasions may arise, negotiations with any government with which the United States may have diplomatic relations, to the end that the differences or disputes arising between the two governments which can not be adjusted by diplomatic agency may be referred to arbitration and be peaceably adjusted by such means.

In speaking of the action of the First International American Conference, which assembled at Washington in the autumn of 1889, Mr. Blaine, then Secretary of State of the United States, said: "If in this closing hour the conference had but one deed to celebrate, we should dare call the world's attention to the deliberate, confident, solemn dedication of two great continents to peace, and to the prosperity which has peace for its foundation," alluding to the agreement which had just been executed, "which abolishes war and substitutes arbitration between the American Republics." In 1890 both Houses of Congress of the United States adopted a concurrent resolution requesting the President to endeavor, as fit occasions arose, to secure that differences or disputes arising between governments which can not be adjusted by diplomatic agency may be referred to arbitration and be peaceably adjusted by such means; and on July 16, 1893, the British House of Commons adopted the following resolution:

*Resolved*, That this House has learned with satisfaction that both Houses of the United States Congress have, by resolution, requested the President to invite, from time to time, as fit occasions may arise, negotiations with any government with which the United States has, or may have, diplomatic relations, to the end that any differences or disputes arising between the two governments which can not be adjusted by diplomatic agencies may be referred to arbitration and peaceably adjusted by such means; and that this House, cordially sympathizing with the purpose in view, express the hope that Her Majesty's Government will lend its ready cooperation to the Government of the United States upon the basis of the foregoing resolution.

President Cleveland in his message to Congress, referring to the foregoing resolution, said:

It affords me signal pleasure to lay this parliamentary resolution before Congress and to express my sincere gratification that the sentiment of two great and kindred nations is thus authoritatively manifest in favor of the rational and peaceful settlement of international quarrels by honorable resort to arbitration.

On March 4, 1897, President McKinley said:

Arbitration is the true method of settlement of international \* \* \* differences \* \* \* and its application was extended to our diplomatic relations by the unanimous concurrence of the Senate and House of the Fifty-first Congress in 1890.



He then proceeds to say: "Since this method has been recognized as the leading feature of our foreign policy throughout our entire national history, the adjustment of difficulties by judicial methods rather than force of arms, and since it presents to the world the glorious example of reason and peace, not passion and war controlling the relations of two of the greatest nations of the world," he ventures to declare that such action would be certain to be followed by other nations. In the instructions issued by Secretary Hay to the American commission to the peace conference will be found these words:

The prevention of armed conflicts by pacific means \* \* \* is a proposition well worthy of the great international convocation, and its realization in an age of general enlightenment should not be impossible. The duty of sovereign states to promote international justice by all wise and effective means is secondary to the fundamental necessity of preserving their own existence. Next in importance to their independence is the great fact of their interdependence. Nothing can secure for human government and for the authority of law which it represents so deep a respect and so firm a loyalty as the spectacle of sovereign and independent states, whose duty it is to prescribe the rules of justice and impose penalties upon the lawless, bowing with reverence before the august supremacy of those principles of right and wrong which give to law its eternal foundation.

Such is the continuous and unbroken expression of opinion by the United States in favor of the resort to arbitration rather than to war, and in this opinion it will be observed Great Britain has significantly concurred; and there has been no want of effective action in harmony with this opinion. During the nineteenth century the Government of the United States entered into 49 agreements for arbitration, including agreements with Brazil, Chile, China, Colombia, Costa Rica, Denmark, Ecuador, France, Great Britain, Haiti, Mexico, Nicaragua, Paraguay, Peru, Portugal, Salvador, San Domingo, Siam, Spain, and Venezuela. Great Britain has entered into a large number of similar treaties, as has France also, and there have been 26 other such treaties, to one or more of which every one of the great powers has been a party. Among all these treaties one of the most significant is that entered into between Italy and the Argentine Republic July 23, 1898, for in this treaty both the parties to it bind themselves to submit to arbitration all disputes, whatever may be their nature, when such can not be adjusted in a friendly way by the ordinary course of diplomacy; and this provision extends to acts occurring prior to the date of the treaty. Elaborate provisions are contained in it for the constitution of an arbitral tribunal and its method of procedure, anticipating in many of these respects the conclusions of The Hague conference in 1899. Indeed, this treaty may be said to form an admirable basis for future agreements of this character if its provisions were so modified as to require a reference

to this tribunal of all questions of considerable importance, reserving only smaller pecuniary claims or reclamations of lesser importance to such mixed commissions as have been constituted by the recent agreements of Venezuela with all her creditor nations, and which commissions are now sitting at Caracas for the judicial investigation and ascertainment of the merits of the claims she is asked to pay before she is required by force to pay them.

Another striking illustration of the value of such a treaty is to be found in the agreement concluded between the United States and Venezuela June 18, 1892. It is true it related to a single claim, but a claim of a very vexatious and difficult character, as to which Venezuela could not persuade herself that any liability on her part existed, and as to which the United States could not persuade herself that such liability did not exist. This claim closely resembled the claims made by Great Britain as a basis for making war upon Venezuela, although of far greater pecuniary importance. So far, however, from resorting to force, to compel compliance with her views of international law, the United States for more than twenty years persistently urged the claim upon the authorities of Venezuela and finally accepted the proposal of Venezuela to refer the matter to impartial arbitration, and thus this long standing contention was finally settled upon the judgment of such a tribunal and without resort to force on the part of the more powerful nation. It seems also as if the language of that treaty fairly expressed the principles which ought to guide this tribunal in the decision of the present controversy, for that tribunal was required to examine and decided the claims submitted to it "in accordance with justice and equity and the principles of international law." During that long period of twenty years Venezuela, like almost all other countries at some period of their history, was the scene of revolutions and factional contests under the leadership of chieftains ambitious for the control of the country; and yet it can hardly be doubted that the Government of the United States acted very wisely in waiting for the restoration of peace to its weak and distracted antagonist and by persistently pressing the claim by diplomatic methods; for by these peaceful means it secured at last its impartial adjudication, with the consciousness it had done nothing in the interval to embitter the relations between the two countries or to make the progress of Venezuela toward a more settled and desirable form of government more difficult.

The future consideration of this controversy will inevitably present to this high court, in very sharp contrast, this action on the part of the United States toward Venezuela in 1892 and of Italy toward Venezuela in 1898 with the action taken by the allied powers in making war upon her in 1902.

The peremptory demands of the allied powers that what they called "claims of the first class" must be paid, but should not be examined, thus refusing any reference to them to an arbitral commission, is the more indefensible in view of the well-known and long-established policy of the Latin-American states to apply the principle of arbitration to the settlement of international disputes. That policy was almost coeval with the establishment of their independence. As early as 1829 Colombia and Peru agreed as follows:

Whatever the motives for disagreement arising between the two Republics may be on account of complaints or insults, offenses or damages of any kind, neither of said Republics can authorize acts of reprisals or declare war against the other without previously submitting their differences to the government of a power friendly to both nations.

This treaty of seventy-three years ago between these two Latin-American states offered an admirable example for Great Britain to follow in 1902. Then followed the treaty of 1832 between Ecuador and Peru upon similar lines, and in 1842 between Venezuela and New Granada. Between the latter date and the meeting of The Hague Conference, one or more of the Latin-American Republics had been parties to as many as 38 such treaties, all solemnly providing for international arbitration of whatever disputes might arise between the parties. And at the meeting of the Second Pan-American Congress in Mexico a treaty was signed January 29, 1902, by nine of those countries to submit controversies between them to compulsory arbitration, while the Republics of Central and South America agreed to avail themselves of the provisions of the Hague Convention relating to mediation and arbitration; so that, it may be repeated, before these great powers made war upon Venezuela the provisions of The Hague Conference with reference to the settlement of international disputes by mediation and arbitration and by recourses to this august tribunal had received the distinct approval of every civilized nation of the globe.

It is not surprising, therefore, that the eminent citizen of the United States, Mr. Andrew Carnegie, who has recently furnished the Government of the Netherlands with ample means to build and equip a palace in this historic city, as a fitting home for this world-embracing court of international justice and peace, should have publicly declared on January 1, 1903:

The world \* \* \* took a long step upward in the closing days of the year just gone, 1902. In the last century one Russian Emperor, Alexander II, and one American President, Abraham Lincoln, banished from the civilized world human slavery, the owning of man by man; to-day another Russian Emperor, Nicholas II, and another American President, Theodore Roosevelt, have jointly pronounced the coming banishment of earth's most revolting spectacle, human war, the killing of man by man. The former suggested and the latter breathed the breath of life into The Hague Tribunal, the permanent

high court of humanity for the peaceful settlement of international disputes. Henceforth the nation which refuses to submit its quarrel to this tribunal places itself in the wrong. The world will not believe it has its "quarrel just."

This widespread concurrence of opinion in favor of mediation and arbitration makes the conduct of Great Britain in preferring war even more inexplicable than it would otherwise be, and the natural wonder at such a preference will be greatly increased when we come to examine the character of the claims presented; as their trivial nature and the doubts surrounding their trustworthiness made it indispensable that they should have been most carefully and impartially examined before payment of them was extorted by force. Indeed, the refusal to permit a claim to be impartially examined is a confession that it is not a just claim.

It is not to be questioned that it is exceedingly trying to the temper and forbearance of the officials of a great nation resident in a far-distant dependency to find themselves close neighbors of a South American Republic in the throes of an insurrection; and it is certain that such officials would find themselves seriously annoyed by irregularities of diplomatic procedure, by delay in answering their reclamations, and by the inability of the struggling Republic to perform with promptness and satisfaction all their duties as a member of the family of nations. Such officials would inevitably be tempted to accept every complaint as well founded, to believe every alleged outrage had been committed, and to endeavor to persuade the great government they represented to inflict summary chastisement upon the weakness of their offending neighbor. On the other hand, it would as inevitably follow that any complaints made by the weak republic against the strong European power, however well founded in justice, would receive very scant consideration, if any, and there would slowly emerge from these criminations and recriminations an attitude of hostility on both sides which might readily eventuate in war, and such was exactly the course the controversy between Great Britain and Venezuela followed.

But just here ought to have appeared the modifying, civilizing declarations of the peace conference, declaring that when diplomatic controversies have approached the verge of hostilities, then a signatory power should propose to its opponent some one of the peaceful methods which that conference thought likely to avert hostilities, and the serener atmosphere which such a proffer of kind consideration for a weak and struggling people would inevitably create might be expected, almost with certainty, to lead to great willingness to listen to the complaints made, and to an exertion of every possible effort to correct the alleged wrongs, and in failing to make such a proposal Great Britain put herself, once for all, absolutely in the wrong.

The fact that the allies possessed more than a million of fighting men under arms and more than 700 fighting ships at sea, while the weak and defenseless nation they dignified with the name of their antagonist possessed only 9,000 soldiers, 3 steamers, 2 sailing vessels, and some small gunboats, must not, however, lead us to do injustice to those great powers, nor to unduly emphasize, for the purposes of this discussion, the vast and appalling disparity between the physical forces they controlled and the physical forces controlled by Venezuela. It is not a necessary corollary of great strength that it must forever endure ill treatment and neglect and the refusal to respectfully consider claims presented by it; nor is it a necessary corollary of great weakness that it may persistently refuse all amicable overtures and all friendly entreaties to agree upon some method of a peaceful adjustment of questions in dispute, and, especially when the amount of such claims is fairly and impartially ascertained, to provide, as promptly as such a weak power is able, for their ultimate payment and discharge. Nor is it wise to underestimate the inevitable irritation great powers must experience when asking for calm and dispassionate consideration of the claims they present, to find themselves postponed, delayed, and, as they believe, trifled with, in a manner which no great nation, in conducting its diplomatic intercourse, would for a moment think of following. The fullest and amplest allowance in considering any such circumstances must be made for the irritation certain to arise from such conduct on the part of the weaker power.

But certainly such vast and appalling disparity of strength as existed between the allied powers of Great Britain, Germany, and Italy on the one hand and Venezuela on the other might fairly be expected to call for the exercise, on the part of each of such powerful allies in dealing with such a weak and defenseless opponent, of very great moderation in the manner of presenting claims, of a long-suffering forbearance in expecting prompt replies to such claims, and a very full and generous appreciation of the inability of Venezuela to meet demands, however just, or even to reply to them as they deserved to be answered, while grappling with an insurrection within her own borders and needing all her energy and every dollar of her available resources in her efforts to suppress such insurrection. It certainly involves no discourtesy to these three great powers to say that while they would be very cautious about provoking any power of strength equal to their own, the possession of such vast land and naval forces offers an almost irresistible temptation to make use of them from time to time when it can be done with safety; that is, to make use of them against weak nations without the power of a dangerous resistance. It must be remembered that the very influential financial and commercial interests now possessing great polit-



ical power in all the aggressive and fighting nations, as well as the fighting instinct of the people of such nations, combine to demand large armies and large navies, and they must sometimes be used when possessed; and while for more than an entire generation no great power has ventured to attack any other great power every one of them has been at war, and some of them often, with some small and defenseless power and has been engaged in despoiling it.

It is not intended in this controversy to pass any judgment upon the devastating and conquering expeditions to which allusion has been made. It is only purposed to use them to illustrate the constant danger of the oppression of small nations by the vast and growing warlike armaments of the great nations; and while human nature remains what it is that danger will be always very real and very constant, and must always be present to the minds of the judges sitting in this high court of justice and of peace.

There is, of course, a very broad distinction, which must always be kept in mind by this tribunal, between a controversy submitted to it involving only questions of money and to be decided according to the usages and principles of international law as they already existed previous to the meeting of the peace conference and the decision of a controversy such as the present. The question in the former instance may well be: What was the law of nations governing such transactions before the peace conference met? The question here is: What, since the peace conference, ought to be the conduct of nations, situated as these signatory powers were, toward a nation situated as Venezuela was in November, 1902? The latter question inevitably presents itself because in all considerations relevant to this controversy the peace conference, with the aid and approval of these allies, distinctly, emphatically, unmistakably introduced new principles into the law of nations and applied entirely new rules for the government of the conduct of states in their relations with each other, so far as they involve demands or controversies which might lead to war.

Before the peace conference met there was no usage or principle which had received the assent of the civilized nations of the world which could have been invoked to prevent Great Britain, Germany, and Italy from assembling their navies in the harbors of Venezuela, and, while refusing to allow their claims to be examined, to demand at the cannon's mouth the immediate payment of such amounts of money as they saw fit to ask; but from the day the pact of peace was signed in this city by these three great nations and an invitation was extended by them to all the nonsignatory powers to avail themselves of the jurisdiction of this tribunal, the situation was absolutely changed. Thenceforward, in the strictest construction of the law of nations, they were bound to conduct themselves toward Venez-

uela in accordance with the principles they had themselves announced, and to act toward her, from the beginning to the end, in the spirit which permeated the members of the peace conference, and which found such repeated and earnest expression in their debates as well as in the formulation of the conclusions they reached and in announcing those conclusions to the expectant and waiting nations of the earth.

Such conduct would seem to be especially demanded in the attempt to collect, by war, claims which had not been submitted to an impartial tribunal of arbitration; for such claims have long been notorious for their evil repute in all chancelleries and in all departments charged with the conduct of foreign affairs, until the amounts demanded by such claimants to be collected by their governments from other governments have become objects of contempt and scorn. That such contempt and such scorn have been richly deserved will appear from a brief summary of the total number and amounts of claims demanded and of the total amounts awarded by the five most important arbitral commissions to which the United States has been a party during the last forty years.

In the commission constituted July 4, 1868, to settle the claims presented by the United States against Mexico and by Mexico against the United States, the record shows that the total amount of claims presented by the United States against Mexico was \$470,126,613.40, and the total amount allowed \$4,125,622.20, the percentage of allowance, therefore, being 0.00877. The claims presented by Mexico against the United States amounted to \$86,661,891.15, and the amount allowed was \$150,498.41, making the percentage of allowance 0.00162.

In the commission constituted May 8, 1871, to settle the claims arising out of the civil war in the United States, the claims presented by Great Britain against the United States amounted to \$96,000,000, and the amount allowed was \$1,929,819, making the percentage of allowance 0.0201. The claims presented by the United States against Great Britain amounted to \$1,000,000, of which nothing whatever was allowed.

In the commission constituted February 12, 1871, to settle the claims presented by Spain against the United States, the total amount of the claims presented by Spain was \$30,313,581.32, and the amount allowed was \$1,293,450.55, making the percentage of allowance 0.0426.

In the commission constituted January 15, 1880, to settle the claims presented by France against the United States, and by the United States against France, the total amount of the claim presented by France was \$17,368,151.27, and the total amount allowed \$625,566.35, making the percentage of allowance 0.003601. The claims presented



by the United States against France amounted to \$2,427,544.91, while the allowance was \$13,659.14, making the percentage of allowance 0.00056.

In the commission constituted August 7, 1892, to settle the claims of the United States against Chile, and of Chile against the United States, the total amount of the claims presented by the United States was \$26,042,976.96, and the amount allowed was \$240,564.35, making the percentage of allowance 0.00923. This commission expired by limitation, leaving undisposed-of claims against the United States for \$232,240, and against Chile for \$9,130,620. These undisposed-of claims were submitted to a new commission, constituted May 24, 1897, and the claims presented to it by the United States against Chile amounted to \$9,130,620, while the allowance was \$28,062.29, making the percentage of allowance 0.00307, while the claims presented by Chile against the United States amounted to \$232,240, and the allowance was \$3,000, making the percentage of allowance 0.0129.

These figures, so far as respects the commissions of July 4, 1868, of January 15, 1880, and of May 24, 1897, are taken from the final reports of the agents of the United States, and can be verified by an examination of those reports in the library of the Department of State of the United States, while the figures for the commissions constituted May 8, 1871, February 12, 1871, and August 7, 1892, are taken from volume 2 of Moore on Arbitrations, pages 1050-1051 and 1480-1481.

It will be observed that these commissions represented claims presented by the United States, by Mexico, by Great Britain, by Spain, by France, and by Chile, so that the character of the nations presenting the claims may be said to be fairly representative of all the civilized nations; and it will be observed, it is believed, with equal surprise and pain, by this tribunal that the total amount of claims presented by these six representative nations aggregated over \$719,000,000, while the total allowances by the arbitral commissions appointed to investigate and settle them amounted to less than \$8,500,000; and yet these three great powers refused to allow the claims they presented and designated as claims of the first class to be examined. Great Britain thus demanded and received \$27,500, Italy a like sum, and Germany \$325,000—no single dollar of which sums has ever been shown to be justly due from Venezuela.

Unjust conclusions certainly ought not to be drawn from the amazing discrepancy between the amounts demanded and the amounts found to be due by the commissions mentioned, but such discrepancy, so great as to shock every honest and fair-minded person who disinterestedly considers the subject, must be held to shed a flood of light upon this whole vexed question of the collection of claims which have

not been examined and settled by an impartial tribunal through the instrumentality of war; and if the decisions of the peace conference which have been already cited needed any further justification than is afforded by their own inherent reasonableness and practical good sense such justification would be found in amplest measure in this astounding and bewildering difference between the amounts of claims presented by these six nations and the amount of claims found to be fairly due them; and it is submitted with confidence that no more significant and illuminating contribution can possibly be made, showing beyond possibility of question the absolute unrighteousness of the enforcement of pecuniary claims which have not been subjected to an impartial examination by a powerful nation by means of war against a weak and defenseless power.

Then, too, insurrection in Venezuela would of necessity empty her treasury, paralyze her internal and foreign trade, and largely dry up the sources of future revenue, while in the emergencies of such warfare the rights of private persons and property could not be thoroughly protected, and would doubtless be frequently violated by both parties.

In considering what ought to be the treatment of the different governments of Latin America by the strong and powerful nations of Europe, it should not be forgotten that they are making a sure, even if a slow, progress along the pathway in which all lovers of mankind wish them to walk. Their steamship lines, their railways, their telegraphs, their telephones, their postal service, and the frequent intercommunication between them and all the rest of the world, which follows in the wake of such services, are constantly being enlarged and improved. Their exports and imports are growing from year to year. Their systems of primary and higher education are gradually extending their beneficent influence over larger and larger numbers of their children, and they are learning, by the growth of commerce and the introduction of the civilizing and humanizing influences which follow in its wake, that they are an inseparable part of the family of nations, and that it is impossible for them to maltreat the citizens of any other country, or to permit the continuance of insurrection and anarchy and a denial of justice without themselves suffering to a far greater degree than the strangers who are the temporary sufferers from such evils. They are inviting immigration by every proper and available means, and the overcrowded portions of the Old World are emptying their surplus people into these growing countries almost day by day in ever-increasing numbers. Several of them, as has already been stated, have already extorted from all other nations the recognition of their rapid and satisfactory growth in civilization.

The allied powers, like so many other critics of the Latin-American republics, seem to make the mistake of insisting that those countries must now and at once present the same settled systems of law and order, protected by the same effective guaranties, as exist among the most highly civilized Nations. Such expectations, it may as well be frankly declared, can not now be realized and may not be realized for many years to come. The early history of those rich, fertile, and beautiful lands is shrouded in more or less of obscurity, and it would not be profitable for the purposes of this controversy to enter into any discussion of the ethnic and other problems which their history presents for the consideration of scientists and students of comparative politics. It is quite sufficient to recognize that the great majority of their inhabitants now consist of mixed races, the result of close contact of Indians and Spaniards and the negroes imported as slaves by Spain during her domination.

The grim and remorseless massacres perpetrated for the purpose of robbery, but in the name of Christian civilization, were but the beginning of three hundred years of tyranny and misrule, exhibiting in their most appalling and exaggerated form all the oppressions a dominant military caste is certain to perpetrate upon a weaker people governed as a dependency of a distant and powerful nation. In the train of this oppression followed its inevitable companion, an equally cruel and ruthless exploitation of all the resources of the dependency; and both these gigantic evils, the tyranny and the exploitation, were only terminated after long, persistent, and bloody wars of independence, which resulted in expelling Spain from South America and handing over the destinies of its people to such rulers as would be likely to have been evolved as the result of such a history.

For the last eighty years the evolution of these communities has been proceeding, doubtless with varying fortunes, but always, it may not only be hoped, but it may be confidently asserted, along the lines of, it may be, a very slow, but a very sure improvement in all the elements essential to a civilized state. It is now well known that Mexico, whose history and fortunes were not dissimilar from those of her sister republics of South America, as well as Chile and the Argentine Republic and Brazil, have vastly improved even in the last thirty years in all desirable respects. Even Venezuela is emerging from the internal difficulties which have assailed her Government, and she has segregated, by an act of public law, in the view of all the nations of the world, 30 per cent of the customs revenues she derives from her two most important ports, and dedicated that percentage to the payment of all debts justly due by her. She has further stipulated, in order to leave no possible doubt of her good faith, and in derogation of her own sovereignty, that in case of default in the application of these revenues to the purpose to which she has assigned

them she will permit the representatives of another country to intrude themselves into her custom-houses and themselves to collect and disburse the revenues so pledged to the purposes to which they have been dedicated.

If it is answered that Venezuela has made these concessions under stress of war, it may be replied that if she had been approached by Great Britain in the kindly spirit of the peace conference before a hostile ship had appeared in her waters, there is no evidence whatever that she would not have accorded precisely the same terms she has accorded now; but that she is able to make proposals of this character at any period of a controversy between herself and other nations is certainly some evidence that she is progressing along the pathway of civilization, and is more and more entitling herself, as well as her sister republics, to the courtesy, the forbearance, and the charity of all great and powerful states. It must also be remembered in this connection that while undoubtedly these concessions were made under stress of war, her sense of equity and justice induced her to insist that all her creditors should be treated with exactly the same measure of consideration and be paid at exactly the same time and in exactly the same proportion, so that the nations unwilling to make war upon her will be given, so far as she was able to control the matter, exactly the same treatment as the powerful and warlike nations which had their hands upon her throat. Indeed, to secure such equality of treatment is the sole object of her appearance here. The decision of the present controversy, whatever it may be, can not in the slightest degree be to her pecuniary advantage or disadvantage. She is here endeavoring to secure what she believes to be the proper decision of the question in dispute, only because she firmly believes that this tribunal ought not to give its award of merit in the form of preferential treatment of their claims to Great Britain, Germany, and Italy for making war upon her under the circumstances existing in November, 1902. She insists, on the contrary, that all her creditors should be accorded equality of treatment.

It follows necessarily, as has been already stated, from the manner in which this tribunal was created, as well as from the character and extent of its jurisdiction, that all questions submitted to it for decision should be presented and discussed in a perfectly fair, open, and catholic spirit, with no desire to obtain any unfair advantage, but with an earnest wish to assist it in reaching just conclusions. Such contentions as the present before this court are not to be treated as if they were mere litigations between private parties, and neither counsel nor judges are at liberty so to treat them. Many of them are sure to be questions of transcendent public interest, involving the application of such fundamental principles of international juris-

prudence as either have already secured or are entitled to secure the assent of the civilized nations in their dealings with each other.

It is, indeed, a happy augury for the influence which we trust is always to increase, of this high court, that international law has not hitherto been a well defined and settled code, but rather like the common law of England, a flexible system, capable of adapting itself, by the wise application of its principles, to the ever-varying conditions of human society. International law has properly been defined as "the sum of those rules and usages which civilized states have agreed should be binding upon them in their dealings with one another," and international law will, therefore, necessarily be widened and broadened by the decisions rendered from time to time by this court so as to include not only those rules and usages which civilized states have heretofore agreed shall be binding upon them, but such additional rules and usages as in the opinion of the eminent and distinguished jurists who have been selected by the signatory powers to represent them here ought to be recognized as binding in the relations of independent nations with each other.

No doubt in reaching any decision whose effect will be to bring within the domain of international law any principle of conduct which has not been heretofore recognized as obligatory, abundant precaution will be taken not to embark upon any new and untried paths, nor to invoke any vague and indeterminate opinions, no matter how wise and good the authors of such opinions may have been, of what constitutes the law of nature, or even the moral law, merely as such; for the duty of this court will be limited to applying to new conditions proper corollaries of such customs, usages, and rights in the intercourse of nations as are now acknowledged to exist.

It will certainly always be difficult, and probably always impossible, to secure any general consensus of opinion as to what line of conduct, in any particular conjunction of affairs, either the law of nature or the moral law, would allow or forbid; and yet as human society ought to and will continually advance to higher and still higher standards of action the nations of the earth ought continually to advance to higher and still higher standards of international morality and justice. To assist them in such advances is to be the crowning glory of the labors of this tribunal; but it ought to be repeated that to attain this end it is not necessary to wander into new and strange paths, or to seek new and unsafe guides, or to endeavor to give to unsubstantial aspirations the force and effect of accepted usages. All that is necessary is to seek for the inner, guiding, controlling principles of the ever-widening doctrines of the law of nations. That law, as has already been stated, consists only of the sum of the usages and doctrines to which civilized nations have given their assent, and has never been based upon what the



consenting conscience of mankind agreed to call the moral law; much less has it ever been based upon the maxims of the Founder of Christianity, nor has it ever been, in many important respects, consistent with those maxims.

In the ancient world, although voices were occasionally heard pleading for a higher conception of the relations of nations with each other, war and conquest, with unutterable woes to the conquered, were accepted without question, and not only the civil but also the moral law was silent when the clash of arms was heard. No word of effectual protest was uttered against the atrocities committed in ancient warfare, although the character of these atrocities was then known as it is now known, for they had been accurately portrayed by sober-minded historians. Lifelong slavery for men and a far worse fate for women were the accepted consequences of such warfare; but when, upon the downfall of the Roman Empire, nations to some degree independent of each other began to arise and engage in war appeal was naturally made to the successor of St. Peter to pronounce judgment upon the quarrels of temporal sovereigns. Thus in its very inception the law of nations was an offspring of the moral law, an effort to bring brute force into some degree of subjection to the rule of justice as pronounced by an impartial umpire. From such a beginning what has happened was fairly to have been expected. The usages of war were surely, even if very slowly, modified, and always in the direction of greater gentleness to the vanquished. The rights of the victors were always lessened. The privileges of neutrals were always enlarged. The rigor of the treatment of women and children was always diminished, and the wanton aggression of the strong upon the weak was more and more discountenanced. For a thousand years these influences, never very strong, but always persistent, which may safely be called Christian influences, were gradually enlarging and elevating the views of rulers as to their rights and duties toward other rulers, and imposing, century after century, a greater degree of constraint upon a resort to mere force for the decision of disputes or for purposes of aggrandizement for which disputes were usually the excuse.

With the new birth in art and letters Europe also began to experience the blessings of a moral Renaissance, and the church began, and still continues, to pray God to show His divine compassion toward all who are "prisoners and captives," and to give "to all nations unity, peace, and concord."

Of course formal rules could not be formulated, nor could justice be always secured from the powerful and willful monarchs who, during that long interval of the middle ages, governed Europe; but slowly, often imperceptibly, the reign of brutal force was assailed by the milder and juster sentiments of men whose minds had been

enlightened by a wider comprehension of the true welfare of mankind, and whose hearts had been elevated by a dawning conception of the indefensible wrong of unjustifiable violence wreaked upon the weak and the defenseless.

Then, too, out of the conception which the church was always preaching of the universal fatherhood of God, preaching often, it is true, for the purpose of exalting its own authority, but still preaching to strong and weak alike, to proud rulers and to oppressed peoples, there arose, as inevitably as the day follows the night, the conception of the brotherhood of man, involving not only claims for enlarged privileges for the individual, but also loftier ethical views of the relations the organized societies of men, called states, ought to sustain to each other.

Gradually the idea of the interdependency of nations thus made its way, and following closely in its wake the realization of the necessity of reducing to system the usage which nations ought to observe in their relations with each other, both in peace and war; and everywhere now began to appear as the underlying, compelling, shaping ideas, the ethical principles of the moral law; for the conviction was constantly growing and spreading that mankind, however subdivided by natural and artificial causes into separate nations with separate and often opposing systems of government, formed, after all, as children of a common Father, and impressed with a common destiny, a kind of political and moral unity, which tended, in spite of all intervening obstacles, to make the welfare of each the welfare of all. This conviction had found more or less adequate expression by the earliest writers upon the law of nations. The contributions of Franciscus à Victoria, of Suarez, of Ayala, and of Albericis Gentilis are of perennial interest to all students of the subject; but no substantial progress had been made in placing international law upon its true basis until Grotius gave to the world his immortal work on Peace and War at the close of the first quarter of the seventeenth century.

Then, too, the instinctive human feeling of pity for the unfortunate refused to be always limited by political boundaries; and even at that early day more than one voice was heard in declaring that the rights of war did not extend to maiming or killing persons not offering armed resistance, and at least two of the commandments found champions. The relentless masters of many legions were at least told, though they too often refused to listen, that they must not wantonly take what belonged to others and that they must not wantonly and in pursuit of conquest destroy those they compelled to be their adversaries. It does not in the least militate against the wisdom of these courageous forerunners of the modern doctrines of the law of nations that their earnest appeals for mercy and righteousness were so often unheeded. That is the fate that the small advance guard of



human progress has long learned to expect; but it has also learned to expect that in some mysterious way, at some unexpected time, it will succeed in sapping the foundations of wrong and in undermining its strong fortresses, for the future, however distant, belongs to them, and the stars in their courses are fighting their battles.

The killing of noncombatants and all the other unnamable horrors of unrighteous war of course continued, as is told on every page of history. The atrocities not to be even stated which were committed in the name of war in the reign of Charles the Fifth; in the wars which devastated and almost destroyed the country whose hospitality we are enjoying and during the Thirty Years' war in Germany, and even as late as the Napoleonic wars, will always continue to be blots upon the names of the sovereigns who countenanced and the commanders who permitted them.

The assembling of the peace conference and its establishment of this tribunal will assuredly prove to be by far the most salutary and effective restraint upon unjust and aggressive wars mankind has ever known; and we may be permitted to hope that if they do not altogether cease, their number will steadily decrease as the practice of arbitration increases; and it is in this hope that we implore this high court to give to this good cause the great weight of a decision, announcing that it is the duty of all nations to proffer mediation and arbitration before they make war.

Having thus endeavored to indicate the general principles which in our opinion ought to govern this court in the decision of the question now before it, we will proceed to examine how far the claims presented by Great Britain and disputed by Venezuela justified the former in making war upon the latter without asking for mediation or arbitration.

Assuming, as has been before stated, that the action of Great Britain toward Venezuela may be taken as a fair example of the action of her allies, Germany and Italy, and that, as her allies, they are undoubtedly bound by her conduct, an analysis of the correspondence between Great Britain and Venezuela, as furnished by Great Britain herself, in her official publication relating to the matter—Blue Book, Venezuela, No. 1, 1903—will probably furnish the most satisfactory basis for reaching a conclusion.

The first claim relates to the landing of 20 Venezuelan soldiers, January 22, 1901, on the island of Patos, between Trinidad and Venezuela, the title to which, as has been already stated, was in dispute between Great Britain and Venezuela. These soldiers are alleged to have seized four small boats belonging to peaceful traders, the crews of which had taken refuge from rough weather on the island, confiscated the cargoes and valuables found on the boats, and carried away some ten or eleven persons, leaving on the island, without food or

water or means of escape, the others "who had escaped into the scrub." Three days later, January 25, 1901, the Venezuelan consul, accompanied by the chief of the Venezuelan navy, reported to the British authorities that the facts relating to the matter were as follows:

Several boats were coming from Venezuela, having on board many revolutionists leaving Venezuela. They were chased by the Venezuelan gunboat *Augusto*. The revolutionists forced the boats to put into Patos Island, where they landed. \* \* \* The consul reports this because the people are still on Patos. He also asks if the police can not prevent Patos being made the point of departure of the revolutionists.

In this statement of the Venezuelan consul it is alleged that he admitted that Patos was British territory, but this is not very probable, because in the statement of the same consul, made February 27, 1901, he declared that the nationality of Patos was a disputed point.

Of these four boats only one was alleged to have been the property of a British subject—one Edward Brown, resident in Trinidad; but it is alleged that other British subjects were carried away by the Venezuelan gunboat which had landed the soldiers on the island of Patos, and among others the following names are given as those of such subjects: "Mrs. Jones, Dolphus, Domingue, Montout, Maxwell, Manto (?), and George." Of these, Mrs. Jones, the only British name on the list, was landed at Yacua and returned unharmed to Trinidad. George was landed at Mapire, "and John (? Manto or Graham) at Guyria." The most of these names are certainly not suggestive of British origin, and the uncertainty relating to them is well expressed by the interrogation marks and the doubts in the statement, which is copied textually from the report of Governor Moloney to Mr. Chamberlain, the British secretary for the colonies. The governor reports that he took advantage of the presence at Trinidad of "the commander in chief of the North American and West Indian squadron," and, accompanied by the colonial secretary and the deputy inspector-general of police, in His Majesty's ship *Quail* he visited the island of Patos, when he found it uninhabited and with no house; and he then adds: "Very serious notice should be taken of this incident, as otherwise neither life nor property will be safe on those parts of Trinidad which are close to Venezuela."

It certainly would strike any reasonable mind that this was a very trifling occurrence indeed, and probably involving three very serious and disputed questions: First, as to the ownership of the island of Patos. Second, as to whether the British subject, named Edward Brown, residing at Trinidad, was or was not engaged in transporting revolutionists, as that is the statement made by the Venezuelan consul and the chief of the Venezuelan navy on January 25, 1901, only four days after complaint had been made. Third, whether the alleged

British subjects on board the three Venezuelan boats were not engaged in the same or some other illicit traffic.

In this connection it may be added that Edward Brown, whose British citizenship is taken for granted, as well as that of Domingue, who, when he comes to sign his name, seems to be called Rich, are both unable to write their names, and attest their statements by their mark.

This disputed and, under the circumstances, very doubtful transaction is represented in the British Blue Book by 29 separate communications and statements. Now it is very confidently submitted that the whole incident is of an unimportant character, and in view of the fact that Venezuela was then engaged in suppressing an insurrection, and that some of the persons seized had confessed their guilt by escaping "into the scrub of the island," while no violence whatever is alleged to have been done to any of the others, and the Venezuelan consul at once promptly claimed that they were revolutionists, and that the island of Patos was treated as a harbor of refuge to which they could escape and from which they could sail with impunity, it would really seem to be too clear for argument that the incident, if insisted upon, was one especially designated as a proper subject of impartial investigation so as to ascertain the truth, if it was to be dignified with consideration at all. Surely this case does not call for war by a power fresh from signing The Hague convention for mediation and arbitration.

The next complaint, following the order of the British Blue Book, is made March 22, 1901, and concerns an alleged outrage on a British subject named James Nathan Kelly, born in Trinidad, aged 40, "but who has been living in Venezuela for the last fifteen years"—that is, ever since he was 25 years old—"where he had purchased an estate and was cultivating coffee and cocoa to a considerable extent in Rio Grande." In January, 1901, Rio Grande was occupied by troops of the Venezuelan Government in pursuit of insurrectionists' forces and it is alleged an officer arrested Mr. Kelly, who was sitting at his own door, and dragged him before a court-martial. In the meantime, it was alleged that his house was broken open and pillaged. Goods to the value of \$300, furniture worth \$300, cocoa of the value of \$1,040, \$1,500 in cash, and a cutter valued at \$500 were taken away by the soldiers. These values in round numbers so closely resemble the exaggerated claims usually made as to call for very careful investigation. Mr. Kelly's wife took refuge, it is said, in the woods near Rio Grande, and making her way to La Guaira eventually reached Trinidad in great distress. Since the first pillage above recounted, Mr. Kelly's estate had been subjected, it is alleged, to further depredations.

It is needless to say that occurrences of this character are almost certain to occur, during the existence of civil war, in almost every country; but it must be admitted they are far more likely to occur

in countries in the state of social and political evolution in which Venezuela unhappily finds herself at present. They are never to be excused, though always to be expected; but in this case it would seem natural to suppose that Mr. Kelly had elected to abide by the fortunes of peace and war in Venezuela, for he had practically adopted it as his own country by making it his home and living in it ever since he was 25 years of age without the exhibition of the slightest intention ever to return to Trinidad, where he is said to have been born. It was hardly a case, therefore, calling for any very indignant remonstrance on the part of the British Government, for such remonstrance would necessarily be in behalf of a person who had practically abandoned his British citizenship and cast in his fortunes with another and different country.

The Venezuelan authorities replied June 19, 1901, that Kelly had been hostile to the established government and was engaged in aiding the insurrectionists in Rio Grande; and they added that his alleged losses were exaggerated.

Here were three grave questions demanding an impartial investigation: First, was Kelly assisting the insurrectionists? Second, had he virtually abandoned Trinidad and become a Venezuelan? Third, what amount of loss had he really sustained? Instead of examining any of these matters, the British minister at Caracas calmly sits still under this alleged outrage upon a British subject from June 19, 1901, until November 20, 1902—just five months after Great Britain and Germany had agreed upon joint action against Venezuela and one month after Venezuela had been formally notified of the alliance, and eighteen months after Venezuela had made her answer to the complaint.

He then proceeds to offer as proof of the loyalty of Kelly to the constituted government the affidavits of the chief of the insurrection in Rio Grande and of two of his followers who were then living temporarily in Trinidad under the protection of the British Government. He frankly admits that "it is impossible for anyone to give an opinion as to the value of the amount of the loss," which according to Kelly's estimate amounts to \$3,640, "an amount which is denied by the Government inspectors," and he therefore demands that Venezuela shall pay Kelly all he claims on the extraordinary ground that the Venezuelan Government "has not disapproved Kelly's claim."

It is, however, due to Lord Lansdowne to say that this grotesque case of Kelly was not allowed to appear in his formal list of alleged wrongs by Venezuela, dated Foreign Office, July 20, 1902, nor in the list of July 29, 1902, nor in the memorandum furnished the Admiralty August 8, 1902, nor in the memorandum of such alleged wrongs communicated to the German ambassador October 22, 1902. It may,

therefore, be safely asserted that this case did not call for war by a power fresh from signing The Hague Convention for mediation and arbitration.

The next complaint in order of time, made April 17, 1902, relates to the burning of the sloop *Maria Teresa*, the property of an alleged British subject, by a Venezuelan gunboat off Guiria; but the *Maria Teresa*, it appears, was sailing under the Venezuelan flag, although alleged to be owned by D. Wilson, a native of Grenada, and therefore a British subject. It further appears that during a then recent disturbance on the Gulf of Paria this vessel fell into the hands of disaffected persons at Yrapa, and that the owner obeyed their orders and took an officer of the insurrectionary forces on board. In this situation the *Miranda*, a Venezuelan gunboat, entered that port and fired two shots at the *Maria Teresa*, and she was afterwards captured and set on fire. During the burning of the ship Wilson, the owner, appears to have been on shore at Guiria as an alleged prisoner of the insurrectionary authorities.

These facts irresistibly lead the mind to the conclusion that not only was this boat sailing under the Venezuelan flag, but that she was actually not only in the custody but in the service of the insurrectionists, and that it was with eminent propriety that a Venezuelan gunboat captured and burned her; and yet the British Blue Book discloses that this pretended outrage was reported in great detail and commented upon in no less than twenty-six communications and statements.

The reply made by the officer of the Venezuelan Government in command of the gunboat which burned the *Maria Teresa* stated:

About the 11th or 12th of January last we were crossing opposite the harbor of Guiria, then in the power of the rebel forces. Having drawn near to the shore, we noticed a sloop putting out to sea with great haste. By General Rosales's orders we started in pursuit of her, but the sloop not obeying the signal to stop, it was necessary to fire one or two blank shots to make her lie to, as she afterwards did. She turned out to be the *Maria Teresa*. The only two men on board of her informed us they put into Guiria by order of the rebel chief; that he was then at Yrapa, and that they had, seeing the steamer, endeavored to flee. General Rosales then ordered them to sail to Trinidad, setting them at liberty. We were already leaving the spot when we saw that the *Maria Teresa*, instead of sailing to Trinidad, was making for the land as fast as she could, with her bow pointed to Yrapa. This being exactly opposite to the orders she had received, and exceedingly suspicious at such a time, we therefore again gave her chase and captured her. Not being able to tow her into any port, because by so doing we should be abandoning the cruise, General Rosales resolved to destroy the sloop as being one of the vessels used by the revolutionists. The boat was in ballast, and nothing whatever of her contents was touched. The two men who comprised her crew were transferred to the *Miranda* without illtreatment of any kind whatever. No documents were found on board the *Maria Teresa* which might prove the ownership of the vessel. The statements of the men and their doubly attempted flight proved their complicity with the rebellion.



A subsequent statement, under date of May 6, 1901, from the customs officer at Guiria, states:

The sloop *Maria Teresa* passed through this port on the 31st of December last on her way from Yrapa with a cargo of fruit for Trinidad, having on board no sailing papers whatever, and returned to this port laden with contraband goods, the individual who acted as captain having, it appears, placed himself at the service of the rebels in Trinidad, whence he brought firearms and ammunition for the rebel forces which were to be found here. \* \* \* From this place he sailed for Yrapa. It can not be said that the captain was pressed into service of the revolutionists, inasmuch as he had enlisted in the service while in Trinidad. At any rate, he had brought firearms, and if he did not claim any remuneration it was because the rebels had authorized him to bring contraband goods. \* \* \* She was known to be engaged in clandestine trade and to be the bearer of implements of war, thus directly opposing the Government. Further, if her captain were not in league with the revolutionists, he would not have traded during that period between this port and Trinidad, and thus would have followed the example of many masters and captains of vessels, who preferred to remain at Trinidad until the Government had resumed control of the district. Mr. George Patterson was arrested for his open hostility to the Government. It is a matter of public knowledge that not only he, but many other British subjects, were seen bearing arms in the service of the rebels.

Surely this case, if to be insisted upon, is also of a character distinctly requiring impartial inquiry into the facts. Considering the existence of the insurrection in Venezuela at this time and the prevalent suspicion, to speak most mildly, that Trinidad and Patos were used as places of refuge and also as sallying ports for the insurrectionists and smugglers, it would seem that the British Government must inevitably have sought some kind of impartial investigation into the circumstances attending this alleged outrage upon a vessel sailing under the Venezuelan flag and believed to be in the service of the insurrectionists. Without such investigation this case also fails to present a justification for war by a power fresh from signing The Hague Convention for mediation and arbitration.

The next alleged outrage, April 9, 1901, is that upon John Craig, a fisherman of Trinidad, and his fishing boat, the *Sea Horse*. He is said to have proceeded to the suspected island of Patos and there to have met another boat, "the *Buena Fe*, belonging to Simon Revera, a Venezuelan citizen." This meeting place of these two boats, it will be observed, was the island of Patos, of disputed sovereignty and of very suspicious reputation; and to this island came three men from a small Venezuelan guarda costa, who are alleged to have assaulted Simon Revera, a Venezuelan citizen, but are stated not to have touched John Craig, a British citizen. As in the former case, there was a suspicious running away by at least one of the men who had landed upon this suspicious island, and the Venezuelan sailors are then alleged to have seized not only the *Buena Fe*, which belonged to Simon Revera, a citizen of Venezuela, but also the fishing boat *Sea Horse*, belonging to John Craig.

In this case it would certainly be natural that as John Craig took his fishing boat, the *Sea Horse*, to the suspicious island of Patos, to meet there another boat, owned by a Venezuelan, a suspicion should arise that they were engaged in some illegal or contraband transaction. This alleged outrage is treated in sixteen communications and statements. In this case not only was the British claim to exclusive sovereignty over the island of Patos flatly contradicted on behalf of Venezuela, which itself laid claim to such sovereignty, but the citizenship of John Craig was also a matter of dispute, the Venezuelan authorities claiming that he was a native of Marguerita, and, therefore, a citizen of Venezuela; and the British minister at Caracas thought it a sufficient answer to this allegation to say that John Craig was a British name, though in the first outrage the list of names suggested anything but British origin. The Venezuelan authorities also offered evidence to show that they were justified in believing that John Craig was engaged in smuggling, and, indeed, his own failure to give any reason for meeting the Venezuelan boat at the island of Patos would seem strongly to support that suspicion. The Venezuelan authorities publicly declared that—

besides the suspicion of contraband which was attached to the boat, with a complicity in the revolution, as it was surprised near the coast where the insurgents were hiding arms, the act of flight in avoiding the vigilance of the coast guard showed us additional proof, and the crew had no documents enabling them to prove their innocence. The man who held the position of master was not Craig, the self-named owner of the boat, but an inhabitant of Marguerita of a very different name, and since the Venezuelan officer was obeying an order of a military character in time of war and on coasts that had been in revolution, the results would have been incomprehensible and even opposed to the exigencies of public order if he had proceeded in any other way in respect to a boat found under such circumstances of guilt.

Now, here at least are three serious questions, affirmed on the one side and denied on the other: (a) As to the ownership of the island of Patos; (b) as to the citizenship of John Craig; (c) as to the suspicions attaching to the boat at the time of its seizure. All of which questions could only properly be resolved by a reference of them to an impartial examination and decision. This case certainly does not call for war by a power fresh from signing The Hague Convention for mediation and arbitration.

More astounding, if that be possible, even, than the character of the alleged outrages as a basis for war, which have already been discussed, is the alleged outrage which follows that alleged to have been committed upon John Craig and his fishing boat. The boat which John Craig met on the island of Patos was called the *Buena Fe*, and was owned by Simon Revera, who is admitted to have been a citizen of Venezuela. If the meeting of these two boats was for a lawful purpose, it is at least remarkable that John Craig does not explain what that purpose was; but, assuming it to have been lawful, the



*Buena Fe* and its owner could not possibly have any standing as the subject of a complaint by the British Government against the Government of Venezuela, as neither the boat nor its owner bore the slightest relation whatever to the British Government. The harbor master at Trinidad seems to have felt the embarrassment of this situation, and says, "Simon Revera, being a Venezuelan, although he informs me he has resided in Trinidad for about three years, and his vessel being under the Venezuelan flag, I have advised him to make his complaint to the Venezuelan consul," which would seem to be very rational advice, under the circumstances. But then, as if possessed by an uncontrollable desire to have as many cases of alleged outrage against the Government of Venezuela as possible, the consul adds: "But seeing that the seeming outrage happened on British soil," the disputed soil of the island of Patos, "I deem it necessary to report the matter for the information of his excellency the governor." Thereupon this citizen of Venezuela, Simon Revera, is encouraged to make declarations of the injuries he has sustained, and those alleged injuries are made the subject of communication by the British minister at Caracas to the Venezuelan minister of foreign affairs. The alleged outrage upon this Venezuelan citizen and his property is treated in four communications, but it then seems to have been allowed to drop out of sight. It also failed to supply an occasion for war by a power fresh from signing The Hague Convention for mediation and arbitration.

The next alleged outrage, in order of time, relates to the seizure of the sloop *Pastor*, August 31, 1901, by the Venezuelan gunboat *Totuma*, and again the locality of the seizure is off the suspected island of Patos. The person who in this case invokes the protection of the British Government is called Numa Audry. He says he is a native of the island of Trinidad, and that while off Patos in his sloop the captain of the Venezuelan gunboat *Totuma* commanded the boat to stop, the captain was taken prisoner, and the next morning the sloop was towed to Guyria by the *Totuma*, and that he himself "was detained for two hours at the custom-house." But in a second statement this same person shows a passport dated August 19, 1901, just twelve days before the alleged outrage, issued to him by the Venezuelan consul at Port of Spain, so that evidently he was a citizen of Venezuela. He says that his "box was rummaged and his razors were stolen." The sailors who were seized, he says, all spoke English and were therefore presumably British subjects. The navigator was a British subject, but he was not transferred to the steamer. "The paper captain was a Venezuelan." He says, "Everybody on the sloop was ultimately released, and I returned to the sloop." This alleged outrage would hardly seem to justify the seizure and sinking of the ships, the blockade of the ports, and the bombardment of the forts

of Venezuela by a power fresh from signing The Hague Convention for mediation and arbitration. Considering that Numa Audry appears to have been a citizen of Venezuela, and his "razors," if stolen at all, were stolen by his fellow-citizens, while everybody on the sloop was ultimately released and he himself returned to the sloop, it is hardly credible that this transaction is made the subject of more or less serious treatment in eleven communications, although not the slightest real injury had been sustained by anybody in the transaction. If so trifling a matter was to be made a subject of serious complaint, certainly some method should have been suggested by the British Government of an impartial investigation of the facts concerning it; and in all these alleged outrages it must never be forgotten that the Government of Venezuela believed that upon the island of Trinidad the enemies of the existing administration of Venezuela were allowed to carry on their plans with absolute liberty. The Venezuelan Government asserted "a proof of the hostile deeds which there are done without hindrance lies in the fact that only a short time ago two bodies of invaders issued from that colony. The first, which was completely defeated, returned to the island; and of the second, various prisoners, forming a living testimony of the origin of the invasion, fell into the power of the Venezuelan military authorities as the result of defeat."

As an illustration of the attitude of the British authorities in Trinidad toward the Government of Venezuela, it is only necessary to quote from the dispatch of the British minister at Caracas to the British governor at Trinidad and from his communications to the Venezuelan minister of foreign affairs, to be found on pages 52 and 53 of the British Blue Book, already mentioned. In the first Mr. Haggard informs Sir Alfred Moloney that the Venezuelan Government "have just informed me that a few days ago a great quantity of rifles and cartridges were disembarked in the island of Tobago, an island near the island of Patos, in a suspicious manner, suggesting that an attempt may be made to produce a disturbance with them in Venezuela. The minister for foreign affairs has begged for my mediation with your excellency in the matter. To this I am replying that it is one entirely for the internal administration of the colony of Trinidad. He also begged me to communicate with your excellency immediately." And on December 2, 1901, Mr. Haggard writes to the Venezuelan minister of foreign affairs as follows:

In my note to your excellency of the 22d ultimo, I informed you that I had lost no time in forwarding to the governor at Trinidad the request of the Venezuelan Government that measures should be taken as soon as possible to prevent the export of certain arms from the island of Tobago, which, as your excellency surmised, were possibly to be used in an attempt to produce a disturbance among the Venezuelan people. I have now received his excellency's reply, in which he states that this matter has been under his consideration, and that he has no knowledge or control over the purposes and direction of these arms, and that

he has no information to lead him to suppose they are going to be used as is alleged. Neither can his excellency find any precedent whatever in favor of interference, nor is he prepared, in view of the condition of things prevailing in the Spanish Main, to accept the grave consequences of any such action against what he is given to understand is legitimate business.

Without discussing the legal questions raised by this last communication it affords an admirable example of the hostile spirit permeating the government of Trinidad toward the existing Government of Venezuela, and of itself would account for far more numerous and far greater outrages by irresponsible adherents of the Venezuelan Government than have ever been alleged to have been committed.

The next alleged outrage is mentioned under the date of January 25, 1902, and consists of the seizure and detention by the Venezuelan authorities of a small colonial sloop, said to be British owned and British registered, the *Indiana*, in the waters of the Parima River in Venezuelan territory, which is open to free navigation, under the award of the British Venezuelan arbitration of the 3d of October, 1899. The name of the alleged British subject who owned this vessel is Antonio Consalves Jardine. The captain of the sloop says that his crew consisted of an Indian boy named Charley, and a black boy named Joseph Nixon; that he had no cargo on board, but only 173 empty flour barrels. The Venezuelan report upon this alleged outrage is that "this vessel, called the *Indiana*, was met in the Venezuelan waters of the Parima River, about 14 miles from the British boundary, without flag or papers of any kind, anchored in front of a house and garden. Upon the Venezuelan commander instituting inquiries, he found that the captain was on shore, that the name of the vessel was the *Indiana*, and that he had come with a cargo of merchandise which had been transshipped on the boundary in small boats to be introduced into the Amacuro territory; that later on he saw the captain, who confirmed this and stated that this was the fourth voyage he had made from Demerara. He then arrested the vessel, the captain escaped in a small dugout, and in a hurricane which subsequently occurred the vessel was wrecked, although efforts were made to save her, and, according to reports received from the local Indians, the crew left the vessel in her boat for Trinidad, abandoning the sloop and carrying off what could be moved."

There is also connected with this case the allegation that a black soldier was guilty of an outrage upon the person of an Indian woman, but it does not seem necessary for this tribunal to enter into the character of that alleged transaction, as it is not believed that it could possibly constitute, in view of the evidence furnished in the British Blue Book, already mentioned, concerning it, the basis for a reclamation by that Government against the Government of Venezuela. Indeed, the British consul at Ciudad Bolivar, under date of February 25, 1902, says: "With reference to the alleged outrage, it is impossible to obtain evidence here, but rumors of something having oc-

curred seem to be current." It may be observed that the trifling and unimportant character of the alleged outrage to this small sloop, believed to be engaged in smuggling, places it in the same general category with those which have been already examined; and like them it certainly furnished no excuse for war by a power fresh from signing The Hague convention for mediation and arbitration.

The next controversy between Great Britain and Venezuela, in order of time, May 13, 1902, concerns only the alleged misconduct of the consul of Venezuela at Trinidad in the discharge of his consular duties; but as an ample remedy for any such misconduct, if it occurred, was in the hands of the British Government, by simply revoking the exequatur of the consul, it does not seem desirable to occupy the attention of this tribunal with a discussion of that controversy, for even if the consul was wholly in the wrong, as alleged by Great Britain, instead of being wholly in the right, as alleged by Venezuela, as his so-called misconduct related wholly to the amount of the fees he exacted and to the collection of customs dues and the delay experienced in the clearance of vessels, no pretension can possibly be advanced that such misconduct on the part of the consul furnished the slightest imaginable excuse for declaring war against Venezuela.

The next alleged outrage is that relating to the destruction at Pedernales of the British vessel *In Time* by the Venezuela gunboat *General Crespo*. The first complaint concerning this matter was sent to the Venezuelan Government June 21, 1902, and is based upon a statement made by one Monnot, an American citizen, who declares that in ignorance of the fact that British law forbade foreign ownership of British shipping, he paid \$200 for half of the schooner *In Time*, owned by William Waith and registered in Trinidad. He took no steps to have his title registered. Another statement says:

I saw the schooner *In Time* at anchor, the sails unbent. Two British subjects, whose names I do not know, left the schooner as soon as the *Crespo* fired at the village, leaving nobody on board. I was on shore, hiding about 500 yards from the *In Time*. One of the *Crespo's* boats boarded the *In Time*, holsted her anchor, and towed her to the *Crespo* and made her fast to that vessel. By their movements on board I knew that they were breaking up the vessel. Meanwhile she was being towed down the river by the gunboat and gradually getting lower in the water. \* \* \* After going about a mile, the hull of the schooner disappeared, her masts remaining visible. I did not see her again. I am an American citizen; was born in Boston. I have been in Venezuela since I was 9 years old. My own boat I had previously secreted in a creek, and she escaped destruction.

JOACHIM (his X mark) RODRIGUEZ.

William Waith, of Port of Spain, a domestic servant, having been duly sworn, states that in October, 1900—

"I bought for \$200, at Morowhanna, British Guiana, Parima district, the river boat *In Time*. In April, 1901, I took her with a cargo to Ciudad Bolivar. I left the schooner there—

Ciudad Bolivar being then in possession of the insurgents.

Now, we ask this court to consider with some care this transaction, so far as it had then come to the knowledge of the British authorities, not on its own account, but because it is fairly typical of their feelings and conduct throughout this whole controversy toward Venezuela.

One Joachim Rodriguez makes his mark to a statement that although born in the United States he had been living in Venezuela since he was 9 years old, and it is therefore fairly to be presumed he had adopted Venezuela as his country. At any rate he was not a British subject. He says he was on shore, hiding about 500 yards from the *In Time*. \* \* \* "My own boat I had previously secreted in a creek." Now, could any reasonable person doubt, upon reading these statements, that some clandestine and unlawful operation was being carried on?

The person who made the complaint against Venezuela was also an American citizen named Monnot, who had bought a half interest in the *In Time* for \$200 and spent some more money in repairs to her. He, like Rodriguez, was certainly not a British subject.

William Waith, who says he is a "domestic servant," but does not state to what nationality he belongs, says he bought the sloop for \$200, and as Monnot paid him the same amount for a half interest in her he suffered no loss by her destruction; indeed, he expressly states that all the repairs to her were also paid for by Monnot. He further states that he had taken her from Trinidad with a cargo of provisions for Ciudad Bolivar, a port notoriously in possession of the insurgents, and he says he left her there in order to join Monnot's launch. "I have no knowledge of what occurred to the schooner afterwards, having left her management to Monnot." It seems that having delivered the provisions to the insurgents at Ciudad Bolivar she returned from there in ballast to Pedernales, "where she has since lain, her services not having been required," \* \* \* supposedly by the insurgents.

Briefly stated, the allegations before the British authorities were these: A small vessel, originally bought for \$200 by a domestic servant, whose nationality was not given, passed into the ownership and control of an American citizen. She had been carrying provisions from Trinidad to the insurgents, but had then been apparently abandoned for nearly a year. The boat in her company had been secreted up a creek and her owner was in hiding. As to the *In Time*, no possible harm was done to anybody by her destruction, even if wrongfully destroyed, except to the American citizen Monnot.

In this connection it is well to repeat the impressive words of M. de Staal, already cited:

Diplomacy, as we all know, has for its object the prevention and the appeasement of conflicts between States, the softening of rivalries, the conciliation of interests, the clearing up of misunderstandings, and the substitution of harmony for discord.



It must be again stated that the course actually pursued by the British authorities in the case of this trifling damage alleged to have been sustained by an American citizen, if by anybody, by the destruction of a small boat belonging to him, the original cost of which was only \$200, and which had been last employed in carrying provisions to the insurgents and then abandoned on the coast of Venezuela, is actually incredible.

With these facts before them the British authorities became as excited and adopted the same menacing tone as when Captain Wilkes in a man-of-war stopped the *Trent* on the high seas and took from her by force Mr. Mason and Mr. Slidell, the diplomatic agents of the Confederacy accredited to Great Britain.\* The destruction of this abandoned little boat on the coast of Venezuela, which had been used to carry provisions to the insurgents and which belonged to an American citizen, was, as if by magic, transformed into such an affront to the dignity and honor of Great Britain as could only be effaced by blood.

The first hysterical utterance over this little abandoned American boat was from the governor of Trinidad, the hotbed of intrigue and of smuggling and insurrectionary expeditions against the constituted Government of Venezuela. He calls this abandoned little boat, owned by an American citizen, a "British vessel," says her destruction shows Venezuela is not carrying on the war in a civilized manner, "advises the seizure by a British man-of-war of the Venezuelan gunboat *Crespo* and the closing of the port of Trinidad to the Venezuelan navy." To this Lord Lansdowne replies: "Lord Lansdowne considers that stronger evidence would be necessary in order to justify so drastic a measure as the seizure of the Venezuelan gunboat. His Lordship thinks, however, that in view of the circumstances \* \* \* Mr. Haggard might be instructed to inform the Venezuelan Government that unless they are able to disprove the reports which have been received relative to the destruction of the "*In Time*"—a little abandoned boat originally costing \$200, owned by an American citizen, and last used to carry provisions from Trinidad to the insurgents—"His Majesty's government may be obliged to cease extending the hospitality of British ports to Venezuelan cruisers." And this language is used in such a case as this by a power fresh from signing The Hague Convention for mediation and arbitration.

The only possible reply under all the circumstances which any self-respecting nation could make to such a wholly unjustifiable threat was made by Venezuela in the note of her minister of foreign affairs under date of July 16, 1902. \* \* \*

The Government of the Republic can not refrain from expressing their surprise at, and making their protest against, the menacing tone of this expression, which is incomprehensible to them, as the action in question would be not only

at variance with but in open opposition to the friendly commercial and political relations which exist between Great Britain and Venezuela. Accordingly, in the opinion of the Government, your Excellency's expression is inadmissible even as a simple official notification.

The "surprise" of Venezuela at the menacing tone of the British Government would not have arisen if it had known what was transpiring in Berlin and in London and that the parading of these trivial and unfounded causes of offense was only a cloak behind which an alliance of Great Britain and Germany was being formed with the real purpose of extorting from Venezuela, while engaged in combating an insurrection fostered in Trinidad and supplied from there, full payment, not only for alleged injuries, but of the bonded indebtedness of Venezuela held in Germany and Great Britain, in order to prevent any examination into the true character of that indebtedness or of the amounts actually and honestly due the holders of those bonds.

On July 23, 1902, just a week after Venezuela had protested against "the menacing tone" used toward her, and three weeks before that protest had reached London, Lord Lansdowne informed the British ambassador at Berlin that "the German ambassador spoke to me to-day about the state of affairs in Venezuela. I told his excellency that we had various causes of complaint against the Venezuelan Government, and that we intended to obtain satisfaction for the claims of British subjects. We should be quite ready to confer with the German Government with a view to joint action."

On July 29, 1902, six days after Great Britain and Germany substantially agreed upon joint action against Venezuela, Lord Lansdowne telegraphed the British minister at Caracas as follows:

The liberty and property of British subjects have, in a succession of cases, been interfered with in a wholly unwarrantable manner by the Venezuelan Government. The following incidents have been the subject of serious consideration by His Majesty's Government: The action of the gunboat *Augusto* in seizing and deporting certain British subjects in January, 1901; the seizure of John Craig's boat and property on Patos Island in the February following; the similar interference on the same occasion in the case of the *Buena Fe*, which was accompanied by violation of territory; and the cases of the vessels *Maria Teresa*, *Pastor*, *Indiana*, and *In Time*.

No satisfactory explanations have been received from the Venezuelan Government in any of these cases. \* \* \* His Majesty's Government can not tolerate a continuance of the conduct which culminated in the last-mentioned incidents, and you will address a formal protest respecting it to the Venezuelan Government. You will say to the President and the minister of foreign affairs in unmistakable terms that unless His Majesty's Government receive explicit assurances that instances of this nature shall not recur, and unless the Venezuelan Government promptly pay to the injured parties full compensation, wherever satisfactory evidence has been furnished to His Majesty's Government that such is justly due, His Majesty's Government will take such steps as may be necessary to obtain the reparation which they are entitled to demand from the Venezuelan Government in these cases, as well as for any



loss to British subjects caused by the unjustifiable conduct of the acting Venezuelan consul at Trinidad and on account of the railway claims.

In view of the facts which have already been detailed, derived entirely from the official publication of the British Government itself, this dispatch can not but be regarded as of an extraordinary character and wholly unjustifiable. Every one of the cases alluded to were of a trifling character, every one involved disputes of fact of the most serious nature, and every one of the alleged depredations was committed by the Venezuelan Government while engaged in a life-and-death struggle for its own preservation, and continually hampered by smuggling and insurrectionary expeditions from Trinidad and the islands of Patos and Tobago. The injuries in themselves were so trifling, and the disputes so well founded concerning the true character of the expeditions in which these small fishing and other trading boats were engaged, that when added to the very doubtful nationality of every single person on board of them, that it was clearly incumbent upon the British Government to deal very considerately with the Government of Venezuela respecting them; and in view of her loud-sounding professions at The Hague, as well as in view of the provisions of the convention to which she had been a principal signatory power, it was doubly incumbent upon her to propose to refer these cases to impartial arbitration for the ascertainment of the facts and the decision whether any, and if any, what damages ought to be paid by Venezuela to any of the alleged sufferers from these occurrences.

On the contrary, the British Government not only declares all the explanations hereinbefore recited as made by the Venezuelan Government unsatisfactory, but directs the British minister to inform the Venezuelan Government in unmistakable terms "that unless His Majesty's Government receive explicit assurances that incidents of this nature shall not recur"—that is, unless the Venezuelan Government ceases to interfere with what she believes to be smuggling and insurrectionary expeditions against her, and unless the Venezuelan Government promptly pay to the injured parties, whether they deserved it or not, full compensation "whenever satisfactory evidence has been furnished," not to impartial arbitrators, but "to His Majesty's Government that such is justly due, His Majesty's Government will take such steps as may be necessary to obtain the reparation which they are entitled to demand from the Venezuelan Government, not only for these cases of alleged outrage, but also for any loss to British subjects, caused by the unjustifiable conduct of the acting Venezuelan consul at Trinidad," although the British Government was at liberty at any moment to send him his exequatur and terminate his official relations, "and [and this is the most remarkable of all the remarkable elements of this dispatch] on account of the railway claims," this being the first mention of any such claims in the official

communications of the British Government purporting to be the correspondence relating to the affairs of Venezuela, from March 16, 1901, to the date of this extraordinary dispatch, July 29, 1902. In other words, less than a week after Germany has been informed that Great Britain would be glad to confer with her in reference to joint action against Venezuela this drastic and bellicose dispatch is forwarded, and "the railway claims" are manifestly its inspiring clause.

The reply of the Venezuelan Government, communicated by the British minister to Lord Landsdowne under date of August 5, 1902, is exactly what was to have been expected from the character of the demands upon it. It states:

In reply to the representations made in accordance with your telegram of the 29th of July, the Venezuelan Government state that in their opinion some of the cases mentioned have been already settled, and that in consequence of the partiality toward the revolutionaries displayed by the government of Trinidad, and pending a settlement of the complaints relative to the *Ban Righ* they have determined to postpone the others.

They reiterate that they can not entertain other cases, unconnected with the *Ban Righ* until that case is satisfactorily settled. With regard to it, they refer to their previous decisions. They further state that the conduct of the acting Venezuelan consul at Trinidad must necessarily be taken into consideration in addition to the friendly attitude of the colonial authorities toward the revolutionaries. The alternative given by His Majesty's Government is ignored.

This dispatch makes it necessary for us to make a brief statement concerning the case of the *Ban Righ*. It seems that as early as November 8, 1901, the commissioners of customs in Great Britain forwarded to the secretary of state for foreign affairs information concerning this vessel, which afterwards became a piratical craft in the service of the insurgents, and was used by them in waging war against the constituted Government of Venezuela. That information was of a character to require the Government of Great Britain to exercise the greatest care to prevent the fitting out in its waters of a vessel, the purpose and destination of which seems from the first to have been clearly perceived by British authorities, and the action concerning it seems in many respects to have followed the same lines of disregard of the obligations of international comity as took place when the Confederate cruisers were let loose from British ports during the American civil war, to prey upon the commerce of the United States. No doubt, in the case of the *Ban Righ* as well as in the case of the *Alabama*, various pretences were alleged by those engaged in securing the vessel for its future service, calculated hereafter to afford some shelter behind which the British Government might escape from responsibility for its ravages; but the correspondence published by that Government itself makes it perfectly clear that unless its authorities had been actuated by an ardent sympathy with the insurgents, and had been willing to furnish them with a British ship to aid them in their effort to overthrow the Government of Venezuela,

no such action would have been taken as was taken with reference to this vessel. Not only was the *Ban Righ* allowed to sail from the port of London after having been altered in that port and with the knowledge of the authorities into a man-of-war, and to proceed to Antwerp to receive on board warlike equipment which had been shipped to Antwerp for that purpose; but thereafter, and when her character was perfectly well understood, she was allowed privileges in British ports which are only accorded to the recognized and duly commissioned vessels of war of friendly powers.

Under date of January 10, 1902, this extraordinary dispatch was sent from Lord Lansdowne to the British consul at Martinique:

It is reported that the steamer *Libertador*, formerly bearing the name *Ban Righ*, has sailed for Venezuela after having been fitted out at Martinique as a man-of-war. While reporting fully by dispatch all information respecting vessel, you should at once telegraph whether she was flying the British flag, who was in command, and whether any British subjects were on board of her.

This pirate ship was released by the British Government November 22, 1901, after having been altered in the port of London from a merchant vessel into a man-of-war. She arrived at Antwerp to take on her equipment to complete her outfit as a man-of-war for the services of the insurgents November 28, 1901, and December 31, 1901, Lord Lansdowne was informed by the British minister at Caracas by telegraph as follows:

A proclamation has been published in the Official Gazette, in which the *Ban Righ* is declared a pirate, and a reward of £2,000, beside the vessel herself and cargo, as a prize, is offered to ships of war or private ships of all nationalities bearing letters of marque granted by the Venezuelan Government, unless the ship's papers are produced or a statement of ownership supported by evidence. I have warned the Venezuelan Government unofficially that any infraction of international law with regard to the right of property of British subjects should be avoided.

It is not easy to understand why such sensitiveness should be felt about the danger to the life or property of British subjects on board this pirate ship, for if they were on board of her after her character was well known, as well as her purpose to make war upon the Government of Venezuela, they certainly had forfeited all claim to the protection of their Government.

Notwithstanding Lord Lansdowne's telegram to the British consul at Martinique, showing that the British Government at that time knew perfectly well, if they had not known before, the true character and destination of this vessel, on January 23, 1902, Lord Lansdowne telegraphs to the British minister at Caracas as follows:

You should inform the Venezuelan Government that the *Ban Righ* left this country in November. There was no reason for detaining her, as no state of war existed between Colombia and any other power, and the Colombian minister stated that she was intended for the service of his Government.

This latter pretense, precisely the same as was used in the case of the *Alabama*, was so transparent that it could not for a moment have imposed upon any person of ordinary intelligence, and certainly not upon Lord Lansdowne, for, on February 7, 1902, we find the British consul at Panama telegraphing to Lord Lansdowne as follows:

The steamship *Ban Righ* is reported \* \* \* to have left for Cartagena and probably for Venezuela. The owner of the vessel at the time of her leaving England, De Paula, came in her as far as Cartagena, and is now returning to England as a passenger on board the *Atrato*. He informed me that the sale to Colombia of title to the vessel was completed on the 1st of January at Martinique, where the English crew were dismissed.

As the vessel was not transferred until the 2d of January, 1902, when she was at sea, by a bill of sale from De Paula to Matos, the notorious Venezuelan insurrectionist leader, who has, while this brief is being prepared, been finally driven from Venezuela and has taken refuge in Curaçao, the Colombian ensign was never hoisted at Martinique. The transfer was notified in writing by De Paula from Savanilla to the registrar of shipping at Aberdeen, and in reply to this naïve disclosure of the true character of this shabby transaction Lord Lansdowne replied to the consul at Panama the next day as follows:

With reference to your telegram of the 7th instant, you should report whether De Paula transferred the steamship *Ban Righ* to the Colombian Government or to a Colombian citizen at Martinique on the 1st of January, and if to a Colombian citizen, you should report his name. If such transfer took place, do you understand that the second transfer was made with the knowledge or by the order of the Colombian Government, and can you explain how De Paula could give a bill of sale to Matos on the 2d of January after having parted with the property in the vessel on the 1st of January?

To this telegram the consul replies, February 11, 1902:

With reference to the inquiries contained in your telegram of the 8th instant, I have to report that according to statement of De Paula he purchased the *Ban Righ* as the agent of the Colombian Government, and was instructed by them after the purchase had been completed at Martinique to transfer the vessel to General Matos.

But in the preceding month, January 24, 1902, the Venezuelan Government had made short work of this network of deception and false pretense about this vessel in their communication to the British minister at Caracas. The minister of foreign affairs for Venezuela said that Lord Lansdowne's telegram of January 23, 1902, did not make any difference in the position, as the *Ban Righ* had sailed originally from a British port, had flown the British flag, and been provided with British papers, therefore England was responsible for her whole subsequent career. He added that the declaration of the Colombian minister that she was intended for the service of his Government was merely a side issue. He clearly conveyed, in fact,

though in polite words, that it was simply begging the question to say that there was not any reason to detain the vessel, because the Colombian minister had said that she was intended for the service of his Government, and no state of war existed between Colombia and any other power. He repeated that a pirate she was, and that we were entirely responsible for her actions; that as revolutionaries on land were only bandits, so she was a pirate at sea. \* \* \* I did my best to persuade his excellency of the untenability of the position taken up by his Government, though without any success." And from that position, thus clearly and distinctly stated and abundantly supported by the correspondence now printed by the British Government, the Venezuelan Government never for a moment departed.

Indeed, as early as January 14, 1902, the Venezuelan Government had distinctly stated to the British minister at Caracas that it had categorical proof of the hostility of the ship and sufficient motive for thinking that it was being directed into Venezuelan waters in manifest connivance with the insurrection which existed in two Venezuelan States. The proclamation issued on board was a full confirmation of the above.

\* \* \* Shortly afterwards the sloop *Santa Olaro* arrived at the port of La Guayra with the upper works destroyed by that pirate ship, and later it was known that the crew of the *Ban Righ* had been taken from the insurrectionists who had an asylum in Trinidad, as is public and notorious in those Antilles, to be secretly conducted to the coast of Venezuela with the object of being disembarked there.

The Government has as yet obtained no information that the British nation, from whose ports, according to your excellency's own statement, was dispatched this hostile ship, has ordered the judgment and punishment of those who contributed to its armament, although it includes in its legislation such adequate disposition as that called the foreign enlistment act of 1870. \* \* \*

Neither maritime law nor any principle or concrete maxim of international law can support a ship constituted in this abnormal condition, and as the Government of Venezuela has taken measures that one part of the national fleet shall go to search for, to chase, or destroy it, so the President wishes your excellency, in accordance with the necessities of its own defense, to be informed of new proofs of the culpability of the ship in case British subjects incorporated in the crew should fall under the natural but just action of the country attacked.

At the same time the Government wishes to solemnly protest against the unusual fact of the clearing in and the dispatching from British ports a ship with the intention of injuring Venezuelan commerce and of disturbing by piratical operations the tranquillity of the Republic. Greater force and fitness is imparted to this protest by the fact that this aggressive movement was prepared in the waters of His Majesty while the British and Venezuelan Governments were enjoying relations of a particularly cordial nature.

In order that your excellency may judge better of the acts perpetrated by this pirate ship I inclose a certified copy of the declarations on the subject of the boarding of the sloop *Santa Claro*.

The inclosure consisted of the statement of the captain of the *Santa Claro*, fully establishing the piratical character of the *Ban Righ* and



of its purpose of aiding the insurrection against the Government of Venezuela, the master being the revolutionary leader Matos himself.

As early as January 16, 1902, the *Ban Righ* was known to have been sailing under the British flag at Baranquilla, and this fact was known at the British foreign office February 20, 1902. In a dispatch of February 10, 1902, from the British consul at Panama, it appears that as early as the appearance of this ship in the port of Antwerp orders had been given to transfer her to the revolutionary leader Matos, but she continued to sail with an English crew until she reached Martinique, while M. De Paula stated privately that the local authorities were assisting the Venezuelan insurgents, and lent their aid in obtaining new men for the vessel. When De Paula transferred the vessel to the revolutionary leader Matos he notified the registrar at Aberdeen, so that, as it appears, she would be registered on the British register as owned by this revolutionary leader. The vessel also hoisted the British ensign at Savanilla, the reason being that Matos feared to hoist either the Colombian or Venezuelan flag.

The name of the vessel, having been already changed from *Ban Righ* to *Libertador*, was now changed to *Bolivar*, and under such name had arrived at Trinidad; and the British foreign office, notwithstanding their full knowledge of the history, purposes, and depredations of this ship, as well as its present ownership by Matos, on March 26, 1902, sent the following extraordinary telegram to the British minister at Caracas: "As the *Bolivar* is stated to be now flying the Colombian national flag and, ostensibly at least, is a man-of-war of that State, His Majesty's Government are not in a position properly to take any action against her. It would be an act of war against Colombia to do so, if she is a Colombian vessel."

It must be remembered that this extraordinary language is used by the British foreign office more than two months after they knew that the vessel had been purchased and delivered to, and was then under the actual command of, Matos, the well-known insurrectionary leader, then engaged in an insurrection against the Government of Venezuela.

His Majesty's Government are under no liability for any depredation that she may commit, nor can Venezuela properly put forward any charge of negligence, in view of the circumstances in which the vessel was permitted to leave this country; but if the British flag has been used since the transfer effected at Martinique, it was a wrongful act, no responsibility for which attaches to His Majesty's Government.

The vessel will not, however, be allowed to make any British port a base of hostile operations against Venezuela, and the Governor of Trinidad has consequently been instructed to refuse her permission to coal, and to request her at once to leave the Port of Spain.

Now, as there was no war between Venezuela and Colombia, unless the British Government knew this vessel to be the pirate ship she really was and had been from the day they allowed her to be fitted for

her piratical expedition at the port of London, there was no reason whatever for refusing her permission to coal, or for requesting her at once to leave Trinidad, and the last part of the telegram is, consequently, absolutely irreconcilable with the first part of it.

It is not at all surprising, therefore, that the Government of Venezuela, weak as it was in comparison with its powerful antagonist, and distracted as it was by its efforts to maintain itself against Matos and the insurrectionists following his flag, when it became thoroughly informed of the complicity of the British Government in the depredations of this piratical vessel, should have replied, under date of February 28, 1902, as follows:

Your excellency's note of the 14th has convinced the Government that all discussion on the question of law on the subject of the *Ban Righ* will have useless and sterile results, since you appear to have resolved to establish between your own opinion and the facts brought forward by the Republic a connection openly opposed to what the cordial relations of friendship existing between England and Venezuela would suggest or advise.

This is the situation of affairs.

Toward the end of last year a ship with a British flag, provided with British papers, left the waters of the United Kingdom, since which time a person who said he was chief of a certain revolutionary movement declared himself in rebellion against the Venezuelan Government and the institutions of the Republic. The ship having been declared a pirate by the government of the nation against which it had begun to perpetrate acts contrary to maritime and international law, your excellency tried, in a conference with me, to take exception to that declaration, and even went so far as to say, in one of your notes, that of the 3d of January, that on this occasion you had warned the Venezuelan Government in the most friendly, but at the same time in the most serious manner, to avoid any infraction of international law with reference to British life and property in case of capture of the *Ban Righ*. At the same time you declared that your Government had approved your excellency's language in the conversation held with me, which I have just recorded.

Vain were the proofs which the Government presented of the manifest infringement of the British laws, even by the insurgent ship; vain the diligence with which the conduct observed by England herself on former occasions was traced out; vain the requests and protests presented by the Government in the name of the injured country. For an explanation your excellency said, in your note of the 24th of January, when the ship had already committed depredatory acts and had disembarked secretly on the shores of the Republic armed expeditions in order to stir up war in the interior, that its dispatch from English ports had only been for the Colombian Government. The presentation of this fact lent more gravity to the occurrence. The ship's fault was greater; the responsibility of the crew, even with regard to British law, became more flagrant, and your excellency, nevertheless, confined yourself to saying in your note of the 6th instant, in order to free the authorities of the United Kingdom from any responsibility for the ship's career subsequent to its start, that it was not a matter of interest for His Majesty's Government. Without change of papers, which it could not do, and with successive change of flag, name, and destination, the steamer *Ban Righ* continued its acts of depredation in the waters and on the coast of Venezuela.

On board the chief of the rebellion in question continued issuing proclama-



tions or long revolutionary communications, one of which, published in *El Imparcial*, of Curaçao, and in other papers of the island, spoke of the complete destruction of the Venezuelan ship they called the *Crespo* by the guns of the same rebel steamer. Add to this fact and to the proof of the culpability of the *Ban Righ* that of her having fired on Cumana and committed serious ravages on the population.

Among the evident proofs which the Government has that the hostility exercised against the Republic by the ship which left British ports with a British flag are the autograph letters themselves written from the ship by the chief of the rebellion, letters which incite sedition in the interior of the Republic in combined or simultaneous action with the same pirate ship.

The state of things produced by the presence of the *Ban Righ* in Venezuelan waters can not but affect in a very direct manner the responsibility of those who gave the ship the opportunity of arriving unhindered on the theater of its insurrectionary plans. To deny all responsibility when such responsibility is proved, amounts, up to a certain point, to not recognizing in the Government the faculty of judging what constitutes an injury to themselves, a right which they possess and which is clearly defined.

His Excellency the President does not, therefore, think that such a situation can exist, and much less can he admit your excellency's opinion that the thing is chose jugee. With regard to this he is giving me orders to express very respectfully to your excellency that he awaits the result of the requests relative to the *Ban Righ* in order to be able, free from every unfortunate impression, to continue considering with your excellency on bases of mutual cordiality the other matters which reciprocally concern the Venezuelan Government and the legation of Great Britain.

It is submitted with great confidence that this communication is eminently creditable to the Government of Venezuela in the situation in which it then found itself placed, and it is of the greatest importance to pass judgment upon this communication, because, resting upon it, the Venezuelan Government declined to engage in further discussion of the slight and trivial causes of complaint alleged against it by the British Government unless the British Government was also willing to make its responsibility for the depredations of this vessel the subject of diplomatic negotiation.

The foregoing communication of February 28, 1902, was followed by another communication on the same subject from the Venezuelan Government to the British minister at Caracas, under date of March 13, 1902. It says:

To the proofs accumulated by the Government, and which increase day by day, with reference to the damages which the Republic has sustained from the dispatch of the *Ban Righ* from a British port, His Excellency the President has now decided to add those of the indifference displayed by the authorities of Trinidad for the actions of the steamer in question, and the still graver proofs of the toleration with which they have seen the preparation in the very territory of the island, and the public and notorious exit thence of expeditions in arms against the peace of the Venezuelan State close to the colony. Your excellency will not have forgotten the earnestness with which the cooperation of the legation was asked some time back to take measures against the island

of Trinidad being made the center of plans directed against the public tranquillity in Venezuela; and although at that time all the good will which was to be expected and which has just been spontaneously shown in conformity with international law by another British magistrate, his excellency the governor of Grenada, was not evidenced by either your excellency or the new governor of Trinidad, the Government had never supposed that indifference as to the tranquillity of a friendly people would be carried to such a pitch by His Majesty's agents that it would actually attract the attention of the inhabitants of Trinidad and would form the subject of censure on the part of the local press of the colony.

The Government of the Republic, without relying on any other proof than that which it sustains directly, find that the ship dispatched from England, arriving in these seas with the British flag, and provided with fighting materials, has been existing for more than two months as a constant injury to Venezuelan commerce; and after having destroyed national ships and fired grapeshot on open and defenseless places, received and took openly from the territory of that island, or, which is the same, from one of the dominions of His Majesty, reinforcements of men and arms to continue in its work of destruction. Such a state of things is all the more flagrant as it is clearly opposed to the character of the friendly relations which Venezuela cultivates with Great Britain. As the simple application of certain laws of the Kingdom appeared to be enough to prevent these injuries, which related as much to the actions of the steamer as to the expeditions from Trinidad, the Government in thus considering it and observing that there follows from this circumstance an omission of the most elementary duties of good friendship, protests against it and reserves to itself the right of claiming damages on account of the injuries which have been sustained by the national interests owing to this omission.

At the same time they repeat their proposal, which has already been entered, to defer the consideration of every matter that may be reciprocally important to the two countries until the time when such a situation as, considered from the point of view of public right, and one, too, so opposed above all to the spirit of cordiality which dominates the relations of Venezuela with Great Britain, shall cease or be compensated for.

On March 24, 1902, the Venezuelan Government addressed the following communication to the British minister at Caracas:

The Government has just learned that the insurgent steamer *Ban Righ* has anchored in Port of Spain without any objection or difficulty on the part of the colonial authorities. Venezuela protested at the time to your legation on account of the acts of hostility that the ship in question had perpetrated on the coast of the Republic against the Government and to the injury of general security. She protested later against the attitude of indifference or tolerance shown by the governor at Trinidad in the face of the revolutionary movements prepared on the territory of the island against the authorities constitutionally established in the eastern States. To-day, in conformity with the special direction of the constitutional President of the Republic, I put forward in this note with all the energy that the case calls for, a new protest against the unusual fact of the colonial authorities, after the measures taken toward the legation, having harbored the steamer. \* \* \*

Under date of March 27, 1902, the British minister replies:

Notwithstanding the notorious character of the ship in question, I am now instructed by His Majesty's Government to inform that of Venezuela that

as it would seem that that ship is now ostensibly at least a Colombian man-of-war, and is flying the Colombian national flag, they can not properly direct any action against her.

On May 16, 1902, the British minister at Caracas reports to Lord Lansdowne—

that the Government of Venezuela had made complaint that General Matos, the notorious insurrectionist, was making Trinidad the base of his attacks on Venezuela, directing, indeed, the revolution thence. \* \* \* I then wrote him not to put forward any request which it would be impossible to grant, such as that of the expulsion of General Matos. \* \* \* I pointed out that for more than half a century Trinidad had been the refuge of Venezuelans of all parties, one after another. Had he ever heard of any being expelled? To-day it was General Matos; to-morrow it might be some of the other party.

And on June 9, 1902, Lord Lansdowne directed the British minister at Caracas to inform the Government of Venezuela that it could not acquiesce in the attempt of the Venezuelan Government to postpone dealing with other pending questions until that of the *Ban Righ* was disposed of.

On July 3, 1902, Lord Lansdowne telegraphed to the British minister at Caracas as follows:

Satisfactory assurances have been received from the Colombian Government, first, that they regard the *Libertador*, formerly *Ban Righ*, as their property; and, second, that so long as no state of war exists between Colombia and Venezuela the use of the vessel for the purpose of committing acts of hostility against Venezuela will not be authorized by them. They have further issued orders that the *Ban Righ* shall proceed to Colombian waters and be stationed in those waters. In view of these assurances the governor of Trinidad has been informed that the refitting of the vessel in Port of Spain Harbor and her departure to Colombian waters may be permitted.

In other words, notwithstanding the notorious character of the vessel and that she was in command, not of a Colombian officer, but of General Matos, the insurrectionist leader, and that she had been continually committing acts of hostility against Venezuela, the British Government accepts the assertion of the Colombian Government and allows her to be refitted for further depredations, in the Port of Spain, and to sail thence to resume perpetration of them.

Venezuela therefore contends that the British Government was in the wrong on an important point of international law and duty in the case of the ship *Ban Righ*, which the latter Government refused finally to discuss or consider.

Venezuela contends that, considering the assurances given by the Colombian minister to the British Government in London before the ship was released from the Victoria Docks, and the fact that afterwards the vessel, fully armed and equipped, was sold and delivered to the insurgent leader Matos, together with all the circumstances in connection with the transaction, disentitled credence in the subsequent

representations of the Colombian Government, as against the proved assertions of Venezuela that the *Ban Righ* was an insurgent ship, and that when thereafter the ship came into British colonial waters, and had been engaged in warfare against Venezuela, the vessel could no longer be properly treated as Colombian property, and that consequently the British Government failed in its duty when it subsequently allowed the Colombian Government to take the *Ban Righ* as its own property out of British waters. The correspondence in connection with the case of the *Ban Righ* indicates how the British Government hesitated and vacillated on the question how it should treat the *Ban Righ* after it had come into British colonial waters, and that it appeared to be seeking to find some plausible ground for letting the ship go as Colombian property, clearly implying its sense of duty to deal with the *Ban Righ* as an insurgent ship. What if the Colombian Government gave assurances that the ship should no more be allowed to engage in hostilities against Venezuela? The vessel was allowed to remain in the port at Trinidad six months. There was the contagious influence of the bad example. There for seven months she lay a constant menace to Venezuela.

Venezuela contends that the introduction into the controversy of the question of the reduction of tariff duties imposed by Venezuela on goods coming from Trinidad was inopportune, as it was not a question which affected the duty of one State toward another State engaged in internecine conflict, and had no relation whatever to the question of alleged denials of justice of British subjects, or of the setting on foot armed expeditions from the British colony against Venezuela.

Finally, Venezuela contends that the *Ban Righ* was sold to General Matos on January 2, 1902, as shown by the reports of the agents of the British Government themselves, the vessel being then under the command of the insurgent leader, and having on board British subjects and their property. Yet with full knowledge of the facts, and after the British foreign office had, on February 7, 10, and 11, 1902, been advised twice, officially, by its acting consul, Hudson, of the transfer of the *Ban Righ* to General Matos, the British minister at Caracas reported to the Marquess of Lansdowne, in connection with the *Ban Righ* case, that "I have warned the Venezuelan Government that any infraction of international law with regard to the life and property of British subjects should be avoided." This was in effect a direct intervention by the British Government in behalf of the insurgents, with an applied threat that if the Venezuelan Government, in defense of its own life, made war on the *Ban Righ* and sunk her and all of her contents the British Government would hold the Venezuelan Government responsible for British life and property on board the

ship. The threat implied that the vessel was officered and manned wholly or in part by British subjects, with their effects aboard. If British subjects cast in their lot with the insurgents aboard that ship, did not Venezuela have the right to make war on that ship and sink her? If the ship was captured, were not such crew subject to court-martial and execution under Venezuelan law for the crime, whether styled "treason" or "piracy," by her municipal statutes? The phrase "international law" used in the threat was meaningless except to cover a threat intended to operate in terror and paralyze the arm of Venezuela, acting in defense of her national right, and proposing, in President Castro's decree of December 30, 1901, the pursuit and capture of the vessel as a pirate, and providing in article 5 that "the capture shall be judged before the proper tribunals and according to the laws of the Republic." Was not Venezuela within her right? That threat was never retracted or modified, or explained or limited, and was held over Venezuela to the last, although Venezuela never threatened British life in violation of international law. Is this conduct so meritorious as to merit the approving judgment of this tribunal by granting preferential treatment to the British Government over other creditor governments? Would the British Government have held this attitude toward any great and powerful government? Would any self-respecting government willingly treat with an adversary which would refuse to discuss such a case?

The Venezuelan foreign minister, in his note of January 14, 1902, in relation to *Ban Righ*, under direction of President Castro, informed the British minister "of the new proofs of the culpability of the ship, in case British subjects, incorporated in its crew, should fall under the natural but just action of the country attacked." He invoked the application of the British foreign-enlistment act. Did the British minister ever give any explanations or assurances that such offenders against a British statute engaged in war on a friendly state should be dealt with? Was De Paula, the naturalized British subject, ever prosecuted?

The correspondence in the British Blue Book shows that the office of the customs, in November, 1901, reported to the British foreign office that a vessel was fitting out in the Thames in a suspicious manner; that the engineer was receiving £25 a month, to be increased to £50 when the vessel sailed; that the crew was much larger than usually carried by a vessel of her size, and they were being paid a proportionate rate; that the vessel has quite recently passed into the hands of a foreigner, De Paula, who was a naturalized British subject; that the master of the vessel had made declaration that he is bound to Callao via Antwerp; that from the various reports received suspicion naturally arises that the vessel is fitting out as a privateer; that the foundation for a swivel gun was laid on the foredeck, similar



to that on the after-deck; that this one, the mate informs me, is for the man on the lookout to stand in, a statement which is questionable; that there has been a connection made from the forward deck to the magazine in the forehold by means of a ventilator and also a well, similar to that previously described by me, in the after-hold, and which one of the workmen informed me was for getting the ammunition through, and appears to me to be a correct statement; that the Colombian consul-general called personally and stated that the vessel was intended to load arms and ammunition at Antwerp for his Government; that the owner of the vessel, De Paula, on November 13, 1901, requested permission for the vessel to proceed; that on November 13, 1901, the Colombian consul-general advised the customs that the *Ban Righ* is for the Government of Colombia and consigned to Colon; that the Marquis of Lansdowne, on November 15, asked the Colombian minister whether the vessel had been purchased by the Colombian Government; that on the next day the owner of the vessel advised the Marquis of Lansdowne that his agreement contemplates the delivery of the vessel at Colon, and that she sails under the British flag and De Paula's ownership until the contract should be completed, and that the courier of the Colombian Government stated that the *Ban Righ* is intended for the service of that Government and asks that necessary orders be given by the Marquis of Lansdowne for the dispatch of the vessel; that on November 21 the Venezuelan Government informed the British minister that no state of war existed between Colombia and Venezuela, and the vessel was thereupon released on November 22; that on November 28 the British consul-general at Antwerp reported the arrival of the vessel there on November 24, and that the *Ban Righ* had come there to complete loading of arms and ammunition; that on January 10, 1902, the *Ban Righ*, under the name of *Libertador*, had sailed for Venezuela after having been fitted out at Martinique as a man-of-war; that on January 23, 1902, the British minister at Caracas was instructed by the foreign office to inform the Venezuelan Government that the *Ban Righ* left this country in November; that there was no reason for detaining her, as no state of war existed between Colombia and any other power, and the Colombian minister stated that she was intended for the service of his Government; that on February 7 De Paula came in the vessel to Cartagena and was now returning to England; that the vessel was transferred on January 2, when she was at sea, by bill of sale, from De Paula to Matos, the insurgent chief, executed under Colombian instructions; that on February 11 the Marquis of Lansdowne was informed by the British consul, Hudson, that, according to a statement by De Paula, he purchased the *Ban Righ* as the agent of the Colombian Government and was instructed by them, after the purchase had been completed at Martinique, to

transfer the vessel to General Matos; that on January 24, 1902, the Venezuelan minister of foreign affairs represented to the British minister that because the *Ban Righ* had sailed originally from an English port, had flown the British flag, and been provided with British papers, therefore England was responsible for her whole subsequent career; that in effect the Colombian representations were a subterfuge, and that the *Ban Righ* had landed arms in Venezuela; that on January 14 the Venezuelan minister of foreign affairs informed the British minister that the *Ban Righ* had changed its name to the *Libertador*, flying the English flag, and provided with British papers, and that the Venezuelan Government had categorical proof of the hostility of the ship and sufficient motives for thinking that it was being directed into Venezuelan waters, in manifest connivance with the rebels in Venezuelan States; that the Venezuelan sloop *Santa Clara* had its upper works destroyed by the pirate ship, and that the crew of the *Ban Righ* had been taken aboard in Trinidad and Curaçao; and he asked that the proper measures be taken for the punishment of those who had contributed to the armament of the ship, pursuant to the British foreign enlistment act, and that the Venezuelan Government had taken measures for its fleet to search for, chase, or destroy the vessel, and informed the British minister of the new proofs of the culpability of the ship, in case British subjects incorporated in its crew should fall under the natural but just action of the country attacked; that on March 25 the colonial office reported to the foreign office on the subject of the vessel variously known as the *Ban Righ*, *Libertador*, and *Bolívar*, and that the vessel had entered the harbor of the Port of Spain followed by two Venezuelan armed gunboats; that on March 26 the Admiralty reported to the foreign office that the Colombian man-of-war *Bolívar*, late *Ban Righ*, arrived at Trinidad March 23; man-of-war's flag; commission from Colombian Republic, and on the same day the British minister at Caracas was instructed that as the *Bolívar* is stated to be now flying the Colombian flag and ostensibly at least is a man-of-war of that State, His Majesty's Government are not in a position properly to take any action against her; that His Majesty's Government are not liable for any depredations she may commit, but that the vessel would not be allowed to make any British port the base of any hostile operations against Venezuela, and the governor of Trinidad has consequently been instructed to refuse her permission to coal and to request her at once to leave Port of Spain. How can the last part of this instruction be reconciled with the previous attitude of the British Government? If Colombia was at peace with Venezuela and the *Ban Righ* a Colombian vessel, why should the British Government refuse the vessel permission to coal? The refusal of per-



mission to coal is a confession that the vessel was engaged in war and was to be so treated in fact, whether Colombian or insurgent.

On February 28, 1902, the Venezuelan minister of foreign affairs made the *Ban Righ* the subject of an energetic representation to the British minister at Caracas. His Government styled the vessel a pirate, which she had a perfect right to do from the standpoint of municipal law, and called the British minister's direct attention to the threat made in one of his notes, that "on this occasion you had warned 'the Venezuelan Government in the most friendly but at the same time in the most serious manner, to avoid any infraction of international law with reference to British life and property in the case of the capture of the *Ban Righ*. At the same time you declared that your Government had approved your excellency's language in the conversation held with me, which I have just recorded.'" This was in effect a threat that Venezuela must not, at her peril, make a war of self-defense against the *Ban Righ*, either as Colombian or insurgent vessel if she had a British crew and property aboard. The minister remonstrated that "without change of papers, which it could not do, and with successive change of flag, name, and destination, the steamer *Ban Righ* (*Libertador*) continued its acts of depredation in the waters and on the coast of Venezuela." At the time this note was written, February 28, 1902, by the Venezuelan minister to the British minister, nearly two months had elapsed, as the British Government well knew, from the date the vessel was sold to De Paula as agent of the Colombian Government, and under its instructions, to the insurgent general.

On April 5, 1902, the Marquis of Lansdowne instructed the British minister at Caracas that the *Ban Righ* was present at Trinidad, disabled, and that permission could not be given to the vessel to refit until satisfactory assurances were received from the Colombian Government, (1) that she is a public vessel belonging to the United States of Colombia; (2) that she will not be permitted to engage in the future in any irregular hostilities against Venezuela, such as are alleged to have occurred. On March 14 the British minister at Caracas reported to the Marquis of Lansdowne a note from the Venezuelan Government stating that so long as the situation created by the dispatch of the vessel continues, the Venezuelan Government can not discuss any other matter.

In the light of the cold facts, could any self-respecting government say or do else? In that same note, the Venezuelan minister complains that the *Ban Righ* for more than two months has been doing "constant injury to Venezuelan commerce, and, after having destroyed national ships and fired grapeshot on open and defenseless places, received and took openly from the territory of the island of Trinidad reinforcements of men and arms to continue its work of

destruction." On April 10, 1902, Governor Moloney telegraphs to Mr. Chamberlain that the Colombian consul has telegraphed for a Colombian man-of-war to tow the *Ban Righ* from Port of Spain or to remove the arms from her, and asked instructions. On March 23, 1902, Captain Campbell, of the British ship *Indefatigable*, informs the colonial secretary of Trinidad that the Colombian man-of-war *Bolivar* was boarded by the officer of the guard from the English ship, and that "on arrival on board I was received by an officer who spoke English." "He informed me he expected to remain a few days in port; one of his boilers had burst and required repairing; that he was bound for a Colombian port. At the same time the boarding officer of the port informed me he had been informed that she was bound for St. Lucia and Martinique."

So far as the correspondence shows, there had never been a transfer of this vessel back from General Matos to the Colombian Government from the date of its sale to Matos by the agent of the Colombian Government on January 2, 1902.

On April 2, 1902, the Marquis of Lansdowne writes to the Colombian minister, Welby, that the *Bolivar*, formerly *Ban Righ*, is now lying disabled at Port of Spain, Trinidad; that she has "committed various acts of hostility against Venezuela."

On March 24 the Venezuelan minister had protested to the British minister against the hospitality shown in British harbors to this hostile insurgent vessel, yet on April 16, 1902, Governor Moloney was instructed that "no objection should be taken to Colombian man-of-war removing vessel referred to (*Bolivar*) in tow or taking on board arms and ammunition now on that vessel. Of the two courses the former would be much preferable, but no assurances of any kind need be insisted on with regard to either." And on June 24, 1902, instructions were given to allow the *Ban Righ* to be refitted in Port of Spain and proceed thence to Colombian waters.

On September 23, 1902, the acting governor of Trinidad reported to Mr. Chamberlain that the *Ban Righ*, having effected necessary repairs, left Trinidad for Cartagena on the night of September 19—after having been given shelter for six months.

As to the position of insurgents in general, it is agreed that they have no belligerent rights. Their war vessels can not be received in foreign ports, they can not establish a blockade which their powers will respect, and they must not interfere directly with the commerce of third States." (Snow International Law, 2d edition, p. 12.)

Professor Snow is a publicist of great authority. His work was based on lectures delivered to the United States Naval War College and was prepared and published by the direction of the Navy Department. It is the authoritative judgment of the Government of the

United States for the guidance of its conduct toward insurgent ships making war on a friendly State.

The British Government, knowing all the facts, allowed the arms and munitions of the *Ban Righ* to be transferred to a Colombian ship flying the Colombian war flag; allowed her, with a single boiler bursted, to remain in the Port of Spain seven months, from March 23 to September 19; gave her shelter and protection until the way was clear for her escape from the Venezuelan war ships. Was that the hospitality which a great government should extend to insurgent war ships seeking to destroy another friendly government? What if the British Government did frame and address to Venezuela a subtle question—was she at peace with Colombia? Was it for the British Government to compel Venezuela to make open declaration of war against Colombia? Was it for the British Government to cripple Venezuela by compelling a declaration that she was at peace?

The duty of the British Government was plain; and if the Colombian Government should complain of the exclusion of the vessel, the answer should have been that the career of the vessel had been characterized throughout by treachery and bad faith; sailing pirate-fashion under different flags; that she had been sold by Colombia to General Matos and made war against Venezuela; that she had never been resold or delivered back by him to Colombia; and therefore the Colombian Government would not justly complain if Great Britain treated the vessel as an insurgent. Was not that the plain course of loyalty to international duty, and would not that just and magnanimous course have redeemed many errors?

What if Venezuela in her dire extremity was compelled to say that she was at peace with Colombia? The fact was notorious; and did not international duty as well as amity require that the ship be treated as such and excluded from the port, which was in fact used for shelter and asylum from Venezuela's war ships, which were present and ready to destroy her if caught on the high seas? Would not Great Britain complain, and justly complain, if an insurgent war ship, after ravaging her commerce on the high seas, were to be accorded such shelter and such privileges and protection in the ports of the United States? Would she not justly feel aggrieved if that ship in a United States harbor were allowed to transfer its arms and munitions to the war ship of another state which had actually intervened in an insurrectionary war against her? And would she not complain if the ship were allowed to remain in the port for an indefinite period until the exigencies of war had called off her fleet and afforded safe egress and escape for the insurgent vessel? Does Great Britain herself recognize the right of an insurgent vessel to shelter and asylum in the port of a friendly state?

In 1837 a rebellion broke out in Canada. A band of insurgents took possession of Navy Island, in Niagara River. We quote now from McMaster's life of Daniel Webster:

The owner of a small steamboat called the *Caroline* cut her out of the ice in Buffalo Creek, and on December 29, 1837, made two trips between Fort Schlosser and Navy Island, taking over men, arms, food, and cannon. Sir Allan McNab, commander of the provincial forces, looked on this boat as in the service of the insurgents, called for volunteers to destroy her, and on the night of December 29 she was boarded at Fort Schlosser by five boat loads of armed men, who drove her occupants ashore, gave her to the flames, and sent her, a blazing wreck, over Niagara Falls. In the course of the attack several of our (American) citizens were wounded and one killed outright. A formal demand for redress and apology was promptly made on the British Government. But no apology was tendered, no redress was offered, and the affair was well-nigh forgotten, when Alexander McLeod appeared at Lewiston one day in November, 1840, and boasted that he was one of that attacking party and had shot Amos Durfee. For this he was arrested on the charge of arson and murder and indicted by the grand jury in February, 1841. Meantime, Mr. Fox, the British minister, who, in 1838, treated the burning of the *Caroline* as the unauthorized act of private individuals, and described the *Caroline* as a boat of "piratical character," now demanded the instant release of McLeod because the destruction of this steamboat was a public act of persons in His Majesty's service, obeying the orders of their superiors. Mr. Fox was then writing without authority. But in February Lord Palmerston assumed responsibility for the deed, declaring that McLeod's execution would produce war—war immediate and frightful in character because it would be a war of retaliation and revenge; and on March 12, 1841, Mr. Fox formally demanded McLeod's release in the name of Great Britain. The declaration that the invasion of our soil and the burning of the *Caroline* were acts authorized by Great Britain, the demand for the instant release of the prisoner and the threat of war gave to the incident a serious character, which Webster, then Secretary of State, was not ready to meet.

The result was that McLeod was acquitted and discharged by the court on technical legal grounds. But Doctor McMaster says—and his life of Webster was written and published in the present century, in the full light of recent historical research—he says that "no apology, no expression of regret of any sort, was ever made" by the British Government for its avowed invasion of the territory of a friendly government.

Former President John Quincy Adams, afterwards, as a representative in Congress, discussing the case of the *Caroline*, said:

I take it that in the late affair the *Caroline* was in hostile array against the British Government, and that the parties concerned in it were employed in acts of war against it, and I do not subscribe to the very learned opinion of the chief justice of the supreme court of New York that there was no act of war committed. Nor do I subscribe to it that every nation goes to war only on issuing a declaration or proclamation of war. This is not the fact. The question is not here upon a declaration of war, but acts of war, and I say that in the judgment of all impartial men of other nations we shall be held, as a nation, responsible; that the *Caroline*, then, was in a state of war against Great Britain for the purposes of war and the worst kind of war—to sustain an insurrection.

When belligerent troops cross a neutral frontier they are interned, their arms are taken from them by the neutral state. Is it then the law of nations that hospitality, asylum, protection are due from a friendly state to an insurgent ship waging war against the parent state? Shall the vessel be refitted in the harbor of refuge in order that it may sally forth again on its destroying mission? Or shall it be permitted to save its arms and munitions for future use by their transfer, in port, to the vessel of another and unfriendly state? And shall the vessel itself be handed over to that state which had sold it with its arms to the insurgent chieftain who had never resold it or delivered it back to that state? Is it a justification to say that the Columbian Government, anxious to save the ship from capture by the Venezuelan fleet which had followed it into port, gave the assurances, which the British Government had invited, that the vessel was Columbian property? Will this high court uphold and reward all this conduct as lawful and benevolent toward a friendly state struggling in the throes of civil war?

The issues were therefore distinctly made up between this weak and defenseless country, torn with internal strife, and the powerful empire of Great Britain. The latter country presents a number of claims of alleged infractions of international law of the character fully set forth, all of which together can not fairly be held to constitute a grievance of any importance, and every one of which, if pressed for settlement, ought to be submitted to examination, both as to the question of liability and as to the amount of such liability, if any existed, by an impartial tribunal.

On the other hand, Venezuela brings against Great Britain a well-founded accusation that she has allowed a vessel to be fitted out as a man-of-war in her ports, and to sail thence to take an equipment in the port of another power, and thenceforward to sail with British sailors, under the British flag, and with a British registry, which continues until she is turned over to General Matos, the notorious leader of the insurrection against Venezuela, after which she also on various occasions hoists the British flag whenever she finds it convenient to do so, and, thus protected and aided, continues her career of piratical depredations against Venezuela. She receives countenance on different occasions in British ports, and the flimsy pretext is set up that, notwithstanding she has been transferred to General Matos, and that he is in command of her, and that she is engaged in acts of piracy against Venezuela, she may be treated by the British Government as a vessel of war of the Republic of Colombia; and for this conduct Great Britain refuses even to discuss the question of any responsibility on her part. The injustice of this absolute refusal of Great Britain to accord the slightest consideration, or even a respectful hearing, to the claim of Venezuela against her on account of the



depredations of the steamer originally named *Ban Righ*, but which steamer attempted to disguise herself under various other names in the course of her checkered history, is perfectly apparent when read in connection with the treaty between the United States and Great Britain, concluded at Washington May 8, 1871, for the settlement of the claims for injuries perpetrated by ships which had been allowed to be built in and issue from British ports under very similar circumstances. In that treaty it is solemnly agreed that a neutral nation is bound "to use due diligence to prevent the fitting out, arming, or equipping within its jurisdiction of any vessels which it has reasonable ground to believe is intended to cruise or to carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessels having been especially adapted in whole or in part within such jurisdiction to warlike use." This language is singularly applicable to the case of the *Ban Righ* before she left the port of London, although the obligation of Great Britain is of course much stronger because Matos and his crew never pretended to be belligerents, only insurgents.

And it was "further agreed that a neutral nation is bound to exercise due diligence in its own ports and waters and as to all persons within its jurisdiction to prevent any violation of the foregoing obligations and duties." This language is singularly applicable to the case of the *Ban Righ* in British ports in the Caribbean Sea.

Certainly this claim of Venezuela against Great Britain on account of the *Ban Righ* was of a far higher and more important character than the claims presented by Great Britain against Venezuela; but, like them, it ought also to have been submitted to the investigation and decision of an impartial tribunal. It might happen—although after the Geneva arbitration it is not easy to see how—that such a tribunal would hold that Great Britain was not responsible, in the forum of international law, for the ravages committed by this pirate ship fitted out in her ports, flying her flag, and protected by her hospitality; but on the other hand it is perfectly clear that Venezuela earnestly believed that such responsibility existed, and it would seem to be entirely clear that before taking any further step looking to compelling Venezuela to pay any British, German, and Italian demands in full, Great Britain, in the pride of her strength and fresh from the peace conference, ought to have herself voluntarily proposed to this weak and distracted Republic the submission of all matters in dispute between them to arbitration.

Unfortunately, however, the prospect of an alliance with an equally great and powerful nation (Germany) had proven too great a temptation to be resisted; and the next step looking toward a war with Venezuela upon these flimsy pretexts was promptly taken. Under

date of August 8, 1902, the British foreign office asks the British Admiralty for their views "as to the most effectual and convenient manner of putting pressure on the Venezuelan Government," and it is added "Count Metternich, the German ambassador, has suggested that the powers concerned should take part in a joint naval demonstration."

In reply to this inquiry the Admiralty incloses to the foreign office a letter from Vice-Admiral Douglass, naming the powerful ships under his command and with which he could carry out a naval demonstration against Venezuela.

On October 22, 1902, the British Government communicated to the German Government the hope that the latter would unite with His Majesty's Government in putting pressure upon Venezuela and associate themselves with His Majesty's Government in this preliminary step; and in such case they may be disposed to instruct their representative at Caracas to inform the Venezuelan Government that the Imperial Government are aware of the communications which have passed between this country and Venezuela, and "that the British and German Governments have determined to act together in pressing the claims of their subjects upon the attention of Venezuela."

In this communication the British Government for the first time, as appears by the Blue Book to which reference has been made, declared that it would demand reparation on account of the claims of the British railway companies, and it stated that there were several British railway companies in Venezuela "which have had claims against the Government in respect of services rendered and damage done to property by Government troops, and in some instances for default of guaranty or else by depreciation of Government bonds;" and on November 13, 1902, the German Government informed the British Government that "in the first class of claims Germany demands the settlement of her claims arising out of the Venezuelan civil war of 1898-1900, amounting approximately to 1,700,000 bolivares (francs)." England in the first instance puts forward claims on account of "the illegal removal and destruction of English merchant ships," being the trifling cases already discussed.

And now at last the true purpose of all this hectoring of Venezuela over trifling and disputed injuries appears. In the event of the two powers having recourse to coercive measures, it was agreed that they would both make further demands. Germany would demand the settlement of her claims arising out of the present Venezuelan civil war, amounting at the present time to approximately 3,000,000 bolivares, and also the guaranteeing of the claims of the German creditors, especially those of the Disconto Gesellschaft, amounting to approximately 41,000,000 bolivares. England would likewise assert the demands of her subjects, especially the claims of the English



railways in Venezuela on account of damage to their lines and failure to meet deferred liabilities.

These claims of the second class would be combined according to their several natures by the adoption of—

the joint proposals recently agreed upon by the Disconto Gesellschaft and the several groups of English creditors interested in the settlement of the Venezuelan loans of 1881 and 1896.

\* \* \* The German Government is of opinion that these proposals are just and may therefore be considered as a suitable basis for a settlement of the Venezuelan external debt.

Among the above-named proposals is contemplated the floating of a new loan limited to 15,000,000 bolívares, with the same securities as the loans of 1881 and 1896.

So at last these two great European monarchies, just fresh from signing the first convention of the peace conference, have entered into an alliance for the purpose of extorting from this weak and distracted South American Republic such reparation as they say they deem proper, for such demands as they say they deem just; and at the same time, in the case of Great Britain, refusing even to consider the claims of Venezuela based upon the depredations committed by the pirate ship *Ban Righ*.

On November 17, 1902, these powerful nations further agree that if joint action against Venezuela is undertaken, "it should be maintained until the demands of both sides, as finally agreed upon are satisfied."

\* \* \* The British claims, as Count Metternich presumed, were capable of classification. Those on account of the recent cases of unjustifiable interference with the liberty and property of British subjects, including the shipping claims, would rank first. Claims for injury to British property during the late revolution and that which placed President Castro in power would come next; and, in the third place, the claims of the bondholders.

His Majesty's Government did not, however, desire in their demands upon Venezuela to draw a distinction between the various categories. Their object was to have a general settlement. They were of the opinion that to advance one class of claims, or at this stage specify any particular amount, would diminish the chance of securing in all cases the reparation which they considered to be justly due. If, therefore, the answer of the Venezuelan Government to the communication recently addressed to them should prove unsatisfactory, or if, after a reasonable interval, it should appear that no answer at all would be returned, His Majesty's Government would propose to proceed to measures of coercion and to seize the gunboats.

If the seizure of the gunboats should not produce the desired effect, it would, of course, be necessary to decide what should be the next step. This point would be carefully considered.

On receiving the statement of the Venezuelan Government, and on learning that they were prepared to admit their liability on every count, His Majesty's Government would, for their part, exact immediate payment of the pressing claims in the first category according to proof by His Majesty's legation at Caracas or by the British colonial authorities. They would then consent to the

heavier claims being referred to a small mixed commission of three members in case the Venezuelan Government should have any considerations to urge in mitigation of the damages claimed.

Under date of November 11, 1902, Lord Lansdowne telegraphed to the British minister at Caracas as follows:

Make a communication in the following terms to the Venezuelan Government in form of a note. His Majesty's Government regrets the unsatisfactory character of the reply to the representations contained in your note of the 30th of July. They are unable to admit that the serious causes of complaint put forward can be met by a refusal to discuss them—

which is exactly what the British Government had done as to the pirate ship, *Ban Righ*.

If such a refusal is persisted in, it will become the duty of His Majesty's Government to consider what steps they shall take for the protection of British interests. They are, however, unwilling to exclude at once a possibility of proceeding with negotiations, and they are therefore ready to consider any further communication which the Government of the Republic may be prepared to make.

On November 17, 1902, the British minister at Caracas telegraphed to Lord Lansdowne the answer of the Venezuelan Government to those demands. He said:

In reply to my note sent in accordance with the instructions contained in your lordship's telegram of the 11th instant, the Venezuelan Government expressly regarded that it might be inferred that the Venezuelan complaints in regard to the *Ban Righ* and to the attitude taken up by the authorities of the colony of Trinidad had not been examined by His Majesty's Government, as, if this had been the case, those complaints would not have been attributed to caprice on the part of Venezuela.

Attention is called to the eagerness of His Majesty's Government or of His Majesty's legation to discuss matters of comparatively secondary importance, when contrasted with the paramount interest felt by Venezuela in obtaining due recognition and respect for her claims which arise from the grave injuries caused by the *Ban Righ* and the facilities afforded to the revolutionaries by the colonial authorities in Trinidad.

They add that Venezuela has done nothing contrary to courtesy or international law, and that she can not therefore justly be held responsible for the present situation. The Venezuelan Government would be much gratified if His Majesty's Government would express some desire to come to an understanding by which the injuries caused by the *Ban Righ* and by the authorities of Trinidad would be remedied, and they maintain that their claims in connection with those two subjects have hitherto been met by the most unfair refusal of His Majesty's Government to consider the matter.

The note continues with the statement "that the Venezuelan Government have most gravely considered the serious nature of the injuries which resulted from the treatment of the *Ban Righ* and the action of the Trinidad authorities, and that they ask nothing from Great Britain which is not a legitimate consequence of the situation thereby created. It therefore appeals to the sense of fairness of His Majesty's Government to effect a settlement of the present abnormal

and regrettable situation by placing matters on a basis of mutual agreement.

It seems as if those final words of beseeching appeal by the Venezuelan Government ought to have received a generous and favorable acceptance by the British Government. The words in themselves are pathetic, as indicating at once a sense of their own inability to resist such a great power, and their fading hope that they would not be driven to the last extremities. They therefore appealed to the sense of fairness of His Majesty's Government to effect a settlement of "the present abnormal and regrettable situation by placing matters on a basis of mutual agreement."

The answer to this appeal for the reference of these matters in dispute to some possible method of just and equitable adjustment was given under date of November 25, 1902, in these words, in a dispatch to the commander in chief of the British navy on the North American station: "In concert with the German Government, His Majesty's Government have decided to enforce claims by seizure of all Venezuelan gunboats. Telegraph when you are ready to commence operations." And the character of the claims thus to be enforced is stated by Lord Lansdowne, under date of November 26, 1902:

(a) Payment of the German claims arising out of the civil wars of the years 1898-1900, amounting to about 1,700,000 bolivares.

(b) Settlement of claims arising out of the present civil war in Venezuela.

(c) Guarantee for the claims of German firms on account of the building of the slaughterhouse in Caracas, amounting to a round sum of 800,000 bolivares.

(d) Guarantee for the payment of the claims of the German Great Venezuelan Railway Company for interest and sinking fund of the Venezuelan loan of 1896.

The Imperial Government also concur in the further proposals of His Majesty's Government to demand at once from the Venezuelan Government the acceptance in principle of all the German and English claims, and to reserve a separate settlement of claims for a mixed commission to be appointed later. The Imperial Government, however, attach importance to the following point: That the German war claims under paragraph (a), which have already been thoroughly investigated and have been presented to the Venezuelan Government for the amounts declared, shall not be subjected to fresh examination at the hands of this commission. Second. The German Government agree that the measures of coercion against Venezuela shall be undertaken as soon as possible. It must, however, be taken into consideration that the last notes between the German and Venezuelan Governments were exchanged more than six months ago, and were not couched in a tone which would justify an immediate resort to measures of coercion. The Imperial Government therefore consider that they should make one last representation to the Venezuelan Government, and therefore propose that Germany and Great Britain should each simultaneously present an ultimatum, in which each power should represent its own collective

demands, referring at the same time to the demands of the other power. The Imperial Government does not consider that this course would result in a postponement of active measures, as the communications might be presented at once, a period of twenty-four hours being granted for compliance.

Third. As regards the coercive measures to be adopted, the Imperial Government is prepared, first, in conjunction with Great Britain to proceed to the seizure of the Venezuelan ships of war.

On December 2 the diplomatic representatives of the British and German Governments at Caracas were instructed to present an ultimatum in which Great Britain distinctly refused to even consider any claim by Venezuela against her, and to demand of Venezuela a declaration recognizing in principle the justice of the British and German claims, and agreeing that they will at once pay compensation in cases of the first class, and that as to other claims they would be prepared to accept the decisions of a mixed commission with regard to the amount and the security for payment to be given.

The next day, December 3, 1902, Italy asked to be allowed to join in the demonstration against Venezuela as an ally of Great Britain and Germany, which privilege was accorded her.

The drama then moved steadily and rapidly to its inevitable conclusion. Three great European monarchies were allied in extorting from this weak and defenseless South American republic, at the cannon's mouth, compliance with their demands, without question or demur, and while steadily refusing to allow any counter demands to be even considered. On December 10, 1902, three small ships of Venezuela were seized and another was disabled. The significant statement is made. "No resistance was offered." The German commodore sank the two vessels he captured. The next day the blockade of the Venezuelan ports and the mouths of the Orinoco was ordered and carried into effect.

Of course nothing was left for Venezuela but to yield to the superior force of these three great powers, and accordingly on December 13, 1902, the American embassy at London informed the British Government that Venezuela had requested the American minister at Caracas to endeavor to secure the submission to arbitration of the matters in dispute. Two days later Lord Lansdowne informs the British ambassador at Berlin that the German ambassador had called on him at his request and discussed with him the proposal made by Venezuela through the Government of the United States in regard to the possibility of settling by arbitration the claims in dispute. "Count Metternich told me that he had not yet received any instructions from the German Government. Speaking, however, for himself, he observed that while we should no doubt desire to meet such a proposal in a manner agreeable to the United States Government, there seemed to him to be considerable objection to encouraging the

idea of arbitration. He observed, moreover, that the proposal was merely passed on to us, and not in any way supported by the United States Government. His excellency further pointed out that it was apparently one which would apply only to claims for injuries sustained through the insurrection, a limitation which might exclude many of our claims. It was again to be borne in mind that the German claim for injuries sustained between 1898 and 1900 had already been carefully examined by the German Government and would therefore probably not be considered by them to be arbitrable."

On December 16, 1902, Lord Lansdowne, writing the British ambassador at Berlin, said: "That the Venezuelan proposal as it stood was unacceptable. \* \* \* We were, however, inclined to admit that whilst it was impossible for us to accept arbitration in regard to our claims for compensation in cases where injury had been done to the person and property of British subjects by the misconduct of the Venezuelan Government, it was not necessary to exclude the idea of arbitration to claims of a different kind. We had already provided for the reference of such claims to a mixed commission."

On December 8, 1902, Lord Lansdowne informed the British ambassador to the United States that—

The cabinet had decided at its last meeting to accept in principle the idea of settling the Venezuelan dispute by arbitration, and we had since ascertained that the view of the German Government was in accord with our own. We considered, however, that some of our claims were of such a kind that we could not include them in the reference. I said that I could not give at that moment a precise description of the excluded claims, but that I should be able to do so shortly.

And on the same day Lord Lansdowne wrote:

The claims that rank first are not, in their present shape, suited for settlement by arbitration. These claims which, as far as Germany is concerned, represent the demands of German subjects in connection with the Venezuelan civil wars of 1898 and 1899, must therefore be immediately recognized by the Venezuelan Government. In case the latter should be unable to meet these demands immediately reliable guarantees must be given for a speedy payment. Second, all further demands contained in the two claims should be submitted to the proposed court of arbitration. \* \* \* The court of arbitration will have to decide both on the material justification of the demands and on the ways and means of their settlement and security.

On January 2, 1903, Lord Lansdowne declared—

That the allied powers ought on no account to allow our representatives at Washington or elsewhere to enter into any discussions \* \* \* until we had obtained from the Venezuelan Government a distinct statement that they unreservedly accepted and agreed to be bound by the conditions numbered 1, 2, and 3 in the memorandum which I communicated to Mr. White on the 23d of December, 1902, and also by the further condition described in the paragraph which follows.

That extract states:

First, the claims small as has already been pointed out, in pecuniary amount, arising out of the seizure and plundering of British vessels, and outrages on their crews and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration. Second, in cases where the claim is for injury to or wrongful seizure of property the questions which the arbitrators will have to decide will only be: (a) whether the injury took place and whether the seizure was wrongful, and (b) if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

And it was added:

It would, in the opinion of both Governments, be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also find the security to be given to the Venezuelan Government and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

And, bowing to superior force, the Government of Venezuela was obliged to accept these peremptory, offensive, and humiliating demands, such as these powers would never have thought of presenting to a power capable of resistance.

Under date of January 9, 1903, the following communication was made to the allied powers:

The Venezuelan Government accepts the conditions of Great Britain and Germany, and requests Mr. Bowen, the American minister at Caracas, to go immediately to Washington for the purpose of conferring there with the diplomatic representatives of Great Britain and Germany and with the diplomatic representatives of the other nations that have claims against Venezuela, and to arrange for an immediate settlement of said claims or the preliminaries for submitting them to arbitration.

As if requiring still further humiliation on the part of Venezuela the German Government, on January 10, 1903, requested the Government of the United States to say to the Government of Venezuela that it—

Interprets the reply of January 9, 1903, to mean the unconditional acceptance of the reservations made in the German note of December 22, 1902. The Venezuelan Government would therefore have to pay the claim mentioned in reservation 1, or provide a guaranty for its payment before entering into the negotiations. As the answer contains no statement as to why or how this payment is to be made or this guaranty given, further information is necessary as regards this point. In particular, in the event of there being no immediate payment, the security would have to be clearly explained, and it would have to be laid down in the event of the guaranty being on the customs by what method payment would be effected from the latter. No further negotiations with Venezuela could be entered upon until payment has been effected or sufficient security actually given.

On January 13, 1903, Lord Lansdowne, for the British Government, declared that—

It would be indispensable that the claims which arise out of the seizure and plundering of British vessels and the outrages on their crews and the maltreat-



ment and false imprisonment of British subjects, which amount to about £5,500, should be at once satisfied.

Other claims for compensation, including the railway claims and those for injury to or wrongful seizure of property, are estimated as amounting to about £800,000. His Majesty's Government will be ready to accept in satisfaction of these claims either a sufficient cash payment or a guaranty based on security which must be adequate and which the Venezuelan Government must be bound not to alienate for any other purpose.

It is desirable that advantage should be taken of this opportunity in order to effect a settlement of the claims of the bondholders.

And Lord Lansdowne then significantly adds:

The establishment of a blockade created ipso facto a state of war between Great Britain and Venezuela.

And again yielding to superior force, which she possessed no possibility of resisting, Venezuela was obliged to accept without reservation the humiliating conditions laid down by these three great powers, and proposed that 30 per cent of the receipts of the Puerto Cabello and La Guaira custom-houses should be made over every month, and that should Venezuela fail to make this payment the creditor nations "shall be authorized to administer the said two custom-houses and put in Belgium officials, with the consent of and without opposition on the part of Venezuela, until the entire foreign debt is paid."

Notwithstanding all these humiliating concessions on the part of Venezuela the British Government, on January 26, 1903, made the further demand that the claims of the powers engaged in the blockade should not rank in the same class as the claims of other powers, and that some special arrangement should be made with regard to the former—"A portion of the revenue of the two ports might possibly be set apart under an arrangement by which the extinction of British, German, and Italian claims within, say, five years would be provided for."

This last demand for preferential treatment—the question now for decision by this tribunal—Venezuela steadily resisted, for the reasons that it was unjust and unfair to tie the hands of the other creditor nations for the period of five or six years that it would take to pay the claims of the allied powers and also because the recognition that brute force alone should be respected in the collection of claims would encourage the other creditor nations to use force also; and, finally, because if the allied powers wished preferential treatment they should have asked for it in the beginning and should not now propose it, after it was understood that all the conditions of the allied powers had been stated and complied with. The controversy was finally closed February 7, 1903, by the signing of the protocols now before this tribunal, referring to it the question of whether or not the blockading and bombarding powers are entitled to preferential payment



of their claims over the claims of the other creditor nations which did not make war upon Venezuela.

A careful reading of the correspondence between Mr. Bowen, the representative, with full powers, of Venezuela, and the ambassadors of the allied powers at Washington, from January 23, 1903, to May 7, 1903, when the protocols were finally signed, will show that Mr. Bowen, representing Venezuela, always denied that any just or equitable basis existed of awarding the allies the preferential treatment they asked only after the whole matter had been settled.

Indeed, the proposal to which they expressly assented was clear and explicit in excluding the right to any such preference. It declared:

Venezuela will pay 30 per cent of the total income of the ports of La Guaira and Puerto Cabello to the nations that have claims against her; and it is distinctly understood that the said 30 per cent will be given exclusively to meet the claims mentioned in the recent ultimatums of the allied powers and the unsettled claims of other nations that existed when the said ultimatums were presented.

Such language absolutely excludes all idea of any preferential treatment of any one class of the claims for which provision is made.

The far-reaching importance of the proper decision in the present controversy can hardly be overestimated. The peoples of the world now at last, on this 1st day of September, 1903, do indeed stand at the parting of the ways. The aggressive, growing, fighting nations will either hereafter accept the ethical adjudications of The Hague Tribunal, or they will continue to discover or invent pretexts for wars of conquest against weaker nations for the sake of subjugating them.

In all ages of recorded history the superior nations have been conquering, subjugating, and exploiting the weaker. Long before Alexander conquered the unoffending people of Asia or Cæsar conquered the unoffending people of France and Germany and Britain, or Napoleon conquered and despoiled the kingdoms of Europe, the strong peoples have been treading the same path of conquest by war, with the same object of enlarging their borders and enriching themselves at the expense of their weaker brethren. Every word spoken at the peace conference breathed the hope that this long and bloody era of

The lust of gain

In the spirit of Cain

was approaching its end. The members of that conference were not likely to cherish any illusions on the subject. They were not dreamers or enthusiasts, cherishing vain expectations of a millenium not likely to appear. They were strong-minded, hard-headed, practical men—statesmen, diplomatists, soldiers—who had done their part as strong men in the rough work of the world. They were familiar with the use of "blood and iron" in securing free government for their fatherlands as well as for oppressed nationalities. They real-

ized the historic as well as the ethical meaning of one United States of America, one United Italy, one United Germany. Some of them, in the measure of their duties, had helped to create those great nations. They accepted, as practical men, all that had been hitherto accomplished as part of the settled system of the civilized world.

They were well aware that the subjection of the weak by the strong had been disguised, as has been already stated, under various appellations, and that it had enlisted in its support not only the lust of gain of the financial and commercial adventurer, not only the inevitable desire of a dominant caste for unrestricted control of weak and distant peoples, but also the natural desire of soldiers by sea and land to win promotion and glory in conflict.

They also were well aware that efforts were constantly being made to dress the old and familiar doctrine that a weak nation has no rights which a strong nation is bound to respect in grave philosophical phrase in the expectation of making it less unpalatable to the growing sense of mankind that right is right and wrong is wrong. Learned professors in America as well as in Europe have undertaken the hopeless task of endeavoring to establish the moral paradox that moral considerations do not enter into the relations of states, and that if any powerful nation can persuade itself that its methods of administration would confer blessings upon a weaker people, it is fully justified by the fact that it possesses superior strength, in subjugating such weaker people by force of arms. The attractive phraseology in which this doctrine is attempted to be exhibited by the learned men who have allowed themselves to be seduced into its advocacy does not in the least disguise its true character.

If "in the relations of nations and states to each other it has in innumerable cases been justifiable to make right bow before might," and if "in whatever way the ethics of ordinary life must treat such cases, history must treat them in the light of their results, and in so doing must allow a certain validity to the principle that the end justifies the means;" and if such use of force by the strong against the weak "is in the general interest of civilization," it will be very easy to discover ample justification for every conquest by France during the Revolution and by Napoleon during the Empire; for there can be no question that the armies of republican France believed themselves fully justified in extending what they believed to be the blessing of their government "by blood and iron" over the surface of the whole habitable globe; and Napoleon certainly persuaded himself that he was more competent to govern Europe wisely and well than any of the monarchs then in possession of its thrones. If the efforts to absorb by force their weaker neighbors can properly be classed as the preservation and advancement of general civilization it will be very difficult to place any practical limitation upon the

right of conquest possessed by the great fighting, growing, dominating nations of the earth. Canada is near to the United States, Sweden and Norway are near to Russia, Holland is near Germany, Belgium is near France, the Swiss Cantons naturally divide themselves by their language into appendages of Germany, France, and Italy; and certainly there can be no reasonable objection, if this doctrine is approved by this tribunal, to Great Britain, Germany, and Italy renewing the alliance so lately dissolved and following the advice which has already been quoted to conquer and hold any one or more of the rich and attractive Republics of Central and South America.

It would not be fair to assume that the general doctrine of the right of conquest was intended by its authors to justify these particular conquests; but assuredly it would be difficult to find a true dividing line between the conquests of the past which are justified and these possible conquests of the future. This new reading of the moral law is not, it is true, explicitly stated to cover every case of the natural desire of a great military and naval power to use a portion of its otherwise useless army and navy to extend what it believes to be its beneficent influence by enlarging the portion of the earth's surface it already controls. So far as South America is concerned, Cortez and Pizarro were the forerunners of this doctrine; and Spain imitating their example and seizing the results of their labors held that great continent in subjection and enjoyed its wealth for three hundred years. If now Great Britain, Germany, and Italy should renew their alliance and seek to partition these fertile lands among them, they would doubtless repeat the course they have just so successfully followed—that of assembling their allied navies in the Caribbean Sea and then demanding from some bankrupt treasury the immediate payment of unexamined claims; and such payment failing, they would again sink vessels, bombard forts, and blockade ports, and possibly they would then venture farther afield, and then, no matter what government was installed at Washington, the world would be again at war.

It was in part to make impossible so great a calamity that this tribunal was instituted, and the proper decision of the present controversy will go very far toward preventing any such disaster.

The decision by this tribunal in this cause in favor of equality of treatment among all the creditor nations of Venezuela would therefore greatly serve the cause of peace, not only in South America, but throughout the world, by giving its great influence in favor of requiring all nations to endeavor, by mediation and by arbitration of all such questions as were involved in the present controversy, to impartial examination and decision, before any threat of war was heard. Allowance would in this way always be made for the sensitiveness,

not so much of governments, as of peoples. The manner in which an independent government is approached—and in the forum of international law the smallest and weakest country is the equal of the greatest and strongest—must always exercise a powerful influence in determining its attitude.

If approached with harsh and inconsiderate language, calculated to wound its pride, demanding payment of claims which have never been proven, and especially if with such language is linked a denial to examine into claims presented by the weaker nation against the stronger, it is almost inevitable that the weaker nation will resent such treatment, and possibly resent it by resorting to delay and by treating the demands made upon it with undeserved indifference and sometimes with undeserved contempt. If, on the other hand, such small and weak nation is approached with language not calculated to wound its susceptibilities, but recognizing its absolute equality, and asking only for such character of treatment as would be asked of a great and powerful nation, then almost as inevitably a method would be found of either recognizing the demands made or of suggesting some method for their peaceful adjustment and settlement; and as the decision of this tribunal will necessarily be construed as approving the one method or the other, and as indicating that the one method or the other ought to be pursued by a strong nation when making demands upon a weak nation, we confidently trust the decision will be in favor of always attempting to secure mediation and arbitration before making war.

In considering what manner of approach by a strong nation to a weak nation this tribunal will seal with its approval, so that it may become a precedent in the future relations of such nations with each other, an especial consideration must be given to the situation of a Latin-American State. The most advanced of them, Mexico, has but recently been the scene of an attempt by a great European empire, to overthrow its republican institutions, and to reduce it to a condition of subjection; and men are still living in those regions who can remember when they were all claimed by Spain, which had been persisting for long years in retaining her control of them "by blood and iron."

It is true that the last thirty years have witnessed a series of very remarkable historic events, that of the withdrawal of so many of the flags of European monarchies from the American Hemisphere. Russia withdrew hers and voluntarily ceded her American possessions to the United States. France, after her failure to reduce Mexico to subjection, withdrew her flag and made no further attempt at colonization. Portugal yielded to the irresistible demand of the people of Brazil for a republican government, and the representatives of the House of Braganza withdrew the imperial flag from Brazil. Spain,

after a short war, withdrew her flag and abandoned her colonies of Cuba and Porto Rico. But the sensitiveness of Latin-American countries is still very great on the subject of any display of force by a great European power toward any one of them; and, of course, this sensitiveness was necessarily greatly increased when they saw the powerful fleets of three great European powers enter as allies into the harbors of Venezuela, to blockade them, and then saw them further engage in sinking her defenseless vessels and bombarding her defenseless ports. It is true that before entering upon this course of conduct, both Great Britain and Germany had taken the very prudent precaution of notifying the only American nation able to resist unjust aggression on their part, the United States, that they intended to respect the well-known policy of that Government, with reference to the permanent occupation of any portion of American territory by any European power, and the United States promptly replied that in any action taken by these powers against Venezuela there must be no accession of territory.

These communications, however, between these great powers would not greatly diminish the apprehensions of a weak and defenseless South American state, even if such communications were made known to her; for she might well apprehend that in the conduct of a war, no belligerent could know in advance what steps might be required to carry the object of the war to a successful conclusion. If the Republic attacked chose to retreat from the seacoast, it might be necessary for the attacking power to land troops, and pursue the retreating forces of the Republic until they could bring them to an engagement. In such case the invading power would have to hold the territory over which it had advanced, and the terms upon which it would surrender such possessions, would necessarily be a matter of future negotiation; and in all such negotiations, the attacking power would have the immense advantage of being in actual possession, so that it would be obligatory upon the United States to dispossess the invading power by force of arms, which contingency it might well be supposed the United States would seriously consider before undertaking so grave and difficult a duty, especially if confronted by the allied navies of Great Britain, Germany, and Italy in the waters of the Caribbean Sea. Such anxiety can only be permanently allayed when some definite line of conduct is prescribed to be followed by such powers as these allies before making peremptory demands upon one of the Latin-American states. The present controversy therefore presents an ethical question, and it must be decided upon ethical considerations; for it ought to determine, as no doubt it will determine, what should be the future conduct of any powerful nation, seeking to secure a settlement of alleged but disputed claims



from a weak and defenseless republic of South America distracted by internal strife.

It is doubtless to be always remembered that the powerful European nation thus confronting with its demands a weak and distracted South American Republic is very apt to think that the latter will be deaf to all remonstrances, however just, and refuse to properly meet all claims, however well founded, because of the belief that the United States stands as a protecting nation between it and the aggression of any European power. But if such misconceptions exist, either in Europe or in South America, there is no ground whatever for their continuance. All that the United States has ever asked, or ever properly can ask, is that no European nation shall seek to establish its system of government upon any portion of the American hemisphere; although it may at any time be compelled to take the further step of demanding that the Latin-American Republics should be treated in the same manner and with the same degree of consideration which ought to be extended to all other independent governments in the family of nations. What line of conduct such a demand would indicate is perfectly clear, and does not impose the slightest hardship upon any European power. It would simply require that in the first instance they should endeavor, without irritation or such domineering spirit as this record discloses, to reach an amicable arrangement by diplomatic methods as to the matters in controversy. If that effort fail, then, as the law of nations has been enlarged by the peace conference, a persistent effort should be made to secure either mediation or arbitration, or both; and if any government of Latin-America was so foolish as finally to decline all such overtures the complaining nation would be at perfect liberty to appoint a judicial tribunal of her own to pass upon the question of the merits of the claims presented and of the financial ability to provide for their payment. Thereafter she would be at liberty to enforce them, and no doubt with the cordial approval of the Government of the United States, by such methods as were likely to produce the best practical results with the least use of armed force; and provided always that no permanent occupancy of any territory was contemplated. This would seem to be the method which common sense and a decent regard for the rights of others, now that the peace conference has authoritatively spoken on the general subject of international relations, would dictate; but there is one additional grave consideration which it is submitted with confidence ought always to be kept in view, and that is that any effort to collect by armed force the indebtedness of independent nations to holders of their bonds or holders of concessions will always be fraught with danger.

No doubt it has for some time past been declared that whether or not such obligations should be collected from the debtor nations by the nation whose subjects or citizens have loaned the money or secured the concessions is a matter of discretion, to be decided in each case as the strong nation may think advisable; or, in other words, according to the amount of political pressure which the interested parties can bring to bear upon it and the weakness of the adversary. This would seem to be an exceedingly unsatisfactory basis upon which to rest the serious business of making war; and the views heretofore presented on that subject by Mr. Drago, on behalf of the Argentine Government, may be taken to represent the thoughtful judgment, not only of the Latin-American states, but also of the people of the United States of America. The British council of foreign bondholders, in their latest report for 1902, state that the principal loans held by British subjects and which were in 1901 in default were as follows: In Argentina, the municipal loans of two cities and the bonds of a mortgaged bank are outstanding to the total amount of \$87,500,000; Costa Rica is in default to the amount of \$10,000,000; Colombia is in default to the amount of \$13,500,000; Guatemala is in default to the amount of \$8,500,000; Honduras is in default apparently to the amount of \$95,000,000; Santo Domingo is in default to the amount of \$19,500,000, and Venezuela is in default to the amount of \$35,000,000. These, it will be observed, are all Latin-American Republics; but the report also shows that in the United States, in the State of Mississippi, the bonds of two banks are in default to the amount of \$30,000,000; that Louisiana is in default to the amount of \$920,000, and that the State of West Virginia is in default to the extent of \$15,000,000. If, therefore, the use of armed force to compel defaulting states to pay their obligations to foreign bondholders is to be recognized as permissible, it is not easy to say why such force may not be employed to collect the debts now due not only from these seven weak Latin-American States, but also from these three North American States. And in this same report the former Confederate States of America are shown to be in default to the amount of \$40,000,000; and, as the United States succeeded to their estates and properties, it would not be beyond the powers of some learned exponents of international law to argue that the United States of America can properly be compelled by force of arms to liquidate that debt. The United States, however, is quite safe, for the brief and checkered history of the use of force to collect the debts alleged to be due to foreign bondholders and holders of concessions presents one unbroken feature. No such attempt has ever been made against a strong nation, and that fact alone ought to be its quite sufficient condemnation.

Leaving out of the question for the present the alleged claims of holders of bonds and holders of concessions, the course hereinbefore



indicated as proper to be pursued for the recovery of all other classes of claims would seem to be reasonable and to impose no undue burden upon any country.

It is certainly possible but not at all probable that instances of willful persistence in wrong doing and willful refusal to accept any reasonable suggestion for the settlement of such claims may occur in the distracted state of some Latin-American country, either while she is engaged in resisting the assaults of some revolutionary chieftain or after such chieftain shall have obtained temporary control of the Government. But if such a case does occur, and the claims have been first judicially examined and ascertained to possess real merit and the country in default is found able to adjust such claim, then no doubt the use of the necessary force under the limitation already mentioned to exact just reparation will be fully justified in the eyes of the whole world.

But even in such case there would be no excuse for an alliance of three great and powerful nations to extort such reparation from one weak country.

It is to be hoped that no such spectacle will again be presented for the harshness of it and the risks encountered in presenting it manifestly greatly outweigh any possible advantages to be derived from it, while the methods of dealing with any similar question if it should arise which have been hereinbefore recommended are far more likely to attain the ends of justice—while offering no danger whatever to the continuance of the world's peace.

In conclusion, we beg leave to recapitulate the principal grounds of the objections entertained by Venezuela, and the creditor nations which did not make war upon her to any further preferential treatment being accorded by this tribunal to the claims presented by Great Britain, Germany, and Italy, as against the claims presented by the other creditor nations of Venezuela.

First. Such further preferential treatment is objected to because Great Britain, Germany, and Italy exacted from Venezuela, at the cannon's mouth, such preferential treatment as they wished; \$380,000 representing such preferential claims as they declared were irreducible in amount, and not subject to examination as to their justice or honesty, as compensation for alleged wrongs done to the respective citizens of those countries; so that it is not reasonable to suppose that they believed the other claims presented by them, falling exactly in the same category and being of precisely the same character as the claims presented by the other creditor nations of Venezuela, should also be accorded preferential treatment.

Second. Such further preferential treatment is objected to because Great Britain, Germany, and Italy distinctly agreed to the proposal of Venezuela that all remaining claims should be treated upon the basis

of exact equality. The proffer made by Venezuela and accepted by the allies was expressed in these clear and unequivocal words: "Venezuela will pay 30 per cent of the total income of the ports of La Guaira and Puerto Cabello to the nations that have claims against her, and it is distinctly understood that the said 30 per cent will be given exclusively to meet the claims mentioned in the recent ultimatums of the allied powers and the unsettled claims of other nations that existed when the said ultimatums were presented."

It would be impossible to use language of greater definiteness or more clearly placing all the claims of the creditor nations upon a basis of equal treatment after the allies had been allowed to extort \$380,000 for alleged claims, of which they refused any examination, as has been already stated. Having secured preferential treatment to that extent, they accepted equality of treatment for all their other claims, and there is no reason whatever why they should now be allowed to change their attitude respecting the matter.

Third. Such further preferential treatment is objected to because equality is equity, and as all nations are equal in the forum of international law, they should be accorded equal treatment by this tribunal unless some valid and conclusive reason can be adduced for denying them such equality.

Fourth. Such further preferential treatment is objected to because the only precedent, so far as we have been able to discover, applicable to the present controversy is that presented in the similar case of China. A number of the militant and powerful nations of the earth joined in extorting from China payment of claims for injuries suffered by them and their respective subjects and citizens. No pretense has ever been made in any quarter that, after having captured Peking and brought the Government of China to its knees, excessive leniency or moderation was displayed by the victorious powers in fixing the payment upon which China would be restored to the possession of her capital. Indeed, these extraordinary words are to be found in the protocol: "The representatives of the powers, after examination of the claims preferred by persons under their protection, shall make an approximate estimate of the amount and shall demand the sum total, without giving either details or explanation to the Chinese Government" of the basis for these demands or of the merits of the claims which were to be satisfied, but neither Great Britain, Germany, nor Italy, who are presenting to this tribunal their claim for preferential treatment, made any such claim in the case of China.

All the powers having claims upon China were allowed exact equality of treatment in the settlement and in the payment of the sums extorted, although two of those powers, Belguim and Spain,

had no naval or military forces in China or Chinese waters. Their diplomatic representatives were allowed, however, to assert claims upon precisely the same basis and to receive payment upon an exact equality with the nations which did furnish the naval and military forces required to extort from China the settlement already mentioned. It may be respectfully submitted that it is not easy to imagine why this tribunal should accord to Great Britain, Germany, and Italy further preferential treatment for the use of their naval forces against Venezuela when no such demand was even preferred by them for the use of their naval and land forces against China.

Fifth. Such further preferential treatment is objected to because the vast disparity of armed forces at the command of the opposing nations by land and sea ought to have prevented these great powers from having recourse to war except in the last extremity. The mere weight of the allies in the councils of the nations would have certainly secured for them such representations by other powers to Venezuela and such demonstration of the folly of any willful denial of justice on her part as must have led to some peaceable adjustment of the matters in dispute.

Moreover, the fact that the merit and justice of the claims presented had never been ascertained by any judicial or impartial investigation ought to have made a recourse to force to extort the amounts demanded absolutely impossible.

It is a fundamental principle of all jurisprudence that before execution of a claim is justified a judicial and impartial investigation of it must have taken place. In other words, the procedure leading to judgment must always precede the employment of the force necessary for the execution of it. Here this only proper course of procedure was distinctly reversed. The demand was made at the cannon's mouth for the payment of the gross sums fixed by these powerful nations themselves, and without any opportunity to know on what basis of merit the amounts so extorted rested. For claims admittedly insignificant, and which the record shows to have been of the most trifling and doubtful character, England demanded and received \$27,500; Italy contented herself with demanding a like sum; while Germany demanded and received the far greater sum of \$325,000. It is not pretended that as to the claims represented by those three sums any judicial or impartial investigation ever took place; so that to-day Venezuela has no means whatever of knowing that in any forum of international law and justice she owed a single dollar of the \$380,000 which were extorted from her by the superior power of her opponents. If she had been courteously asked to agree to the creation of a mixed commission which should investigate these claims and pass upon them, or if she had been offered even the alternative of

being present at the sitting of commissions appointed by these great powers themselves, it would afford some excuse for extorting the amounts thus ascertained to be due from her by force; but in the total absence of any pretense of investigation or examination it is difficult to see how this court can be seriously asked to adjudge that the refusal to pay such amounts afforded a just cause for making war, for seizing and destroying her gunboats, for blockading her ports, and for bombarding her forts, and that the making of war upon her under such circumstances deserves the distinct approval of this tribunal.

A proper respect for the opinions of mankind would have required Great Britain at least to have paused long enough to pay some attention to the remarkable growth of the principle of international arbitration throughout the whole of the nineteenth century, especially as she had in many instances given her distinct adherence to that principle. And it was well known to her that every one of the States of Latin America had over and over again declared their adherence to the principle, and illustrated such adherence by the number of treaties of arbitration to which they had become voluntary parties. The course to be pursued, therefore, by her was perfectly plain. She resolutely turned her back upon that course and resorted to force. knowing to such force as the allies could employ Venezuela could offer no resistance whatever. Such conduct, we repeat, can not seriously expect the approval of this tribunal.

Sixth. Such further preferential treatment is objected to because it was the duty of Great Britain to have asked Venezuela to agree to the arbitration of these differences, even if the peace conference had not met, or she had not been a leading participant in its deliberations and solemnly joined in its conclusions; but it is still more difficult to see why she should be accorded by this tribunal preferential treatment for making war upon Venezuela after she had affixed her signature to the declarations of the peace conference, that an honest endeavor should always be made to apply the methods of mediation and arbitration in all disputes between nations before there was a recourse to arms. If it is attempted to make answer that Venezuela should have made such a suggestion, it is sufficient to reply that great strength imposes great obligations, and that it was perfectly consistent with national honor for a great nation like Great Britain to proffer mediation and arbitration to the weak and distracted people of Venezuela, while Venezuela in her weakness may well be excused for not offering such a suggestion, especially in view of the treatment her representations had received in respect to the depredations of a piratical vessel fitted out in a port of Great Britain to aid the revolution then in progress within her borders. It is, of course, to be

regretted that Venezuela did not make such propositions; and if she was before this tribunal claiming the distinct mark of its approval for not having made such propositions, she would not be entitled to it. She is here, however, without any pecuniary interest of her own to serve, and simply endeavoring to maintain the proposition that as Great Britain made no such suggestions to her, she is not entitled to your approval for having made war instead of proposing mediation or arbitration.

And, finally, such further preferential treatment is objected to because this tribunal was organized to advance the cause of peace among the nations and not the cause of war. Venezuela may have committed many mistakes, she may have committed many wrongs, she may in her weakness have exhibited an unwise opposition to demands she was not able to resist; but when confronted with the necessity of submitting to those demands she declared that in doing so she simply bowed to superior force; and even then she preserved her national dignity by demanding that all her creditors should be placed upon the basis of exact equality, and all claims ascertained to be just should be paid, one equally with another. It is that contention she is here, without possibility of pecuniary advantage to herself, to maintain. On the other hand, the allies are here in the interest of their great resources for making war by land and sea, and they ask this tribunal of peace to place its distinct sanction and its distinct approval upon their having made war upon Venezuela under the circumstances which the record of this cause discloses. They demand of you not only that you shall abstain from criticising their conduct. You are not asked to criticise their conduct, for it does not necessarily fall within your province to do so, in deciding the question which has been submitted for your decision, but abstension from criticism on your part does not satisfy them. They demand your affirmative approval of their conduct by giving their claims the preference over the claims of the nations which abstained from making war.

Such approval we earnestly submit this tribunal, having due regard to the principles to which it owes its existence and to the spirit which inspired the conference which created it, can not give. On the contrary, we appeal to you to abstain from giving preference to nations for making war to extort payment of claims not ascertained to be just; and we also appeal to you to assert that whether making peace or making war, all nations before this tribunal are equal and their claims shall have equality of treatment. By such a decision you will exercise your noblest functions, for you will help to keep all the nations of the earth in the paths of peace, and you will help the world to realize the noble aspirations of the august sovereign who initiated The Hague Conference, and of the distinguished statesmen, diplomatists, jurists,

and soldiers who in all its deliberations gave the full measure of unselfish devotion to the cause of international peace.

It is, we believe, in absolute and perfect loyalty to them and their labors that we ask you for a decision which, in ways we may not know and in days we shall not see, will prove to be in happy conformity "with the most essential interests and the legitimate views of all powers" by aiding "the establishment of the principles of justice and right upon which repose the security of states and the welfare of peoples."

WAYNE MACVEAGH,  
HERBERT W. BOWEN,  
WILLIAM L. PENFIELD,  
*Counsel for Venezuela.*



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PART III.

Appendix to the Case of Venezuela.

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## APPENDIX TO THE CASE OF VENEZUELA.

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### I. BRITISH BLUE BOOK, VENEZUELA, No. 1, 1903.

The first place in the appendix would naturally be occupied by the British Blue Book on Venezuela, No. 1, 1903, to which frequent references are made in the preliminary examination. But it was thought it would be more convenient for the members of the court to be furnished with copies of it than to reprint it here. That method is accordingly adopted.

### VENEZUELA'S "YELLOW BOOK," PAGES 5 TO 46.

#### PART FIRST—GERMANY.

##### *The Ministry of Foreign Relations of the United States of Venezuela.*

The document entitled, "Papers Relating to the Foreign Relations of the United States," published annually by the Department of State of Washington, contains, in its last issue corresponding to December, 1901, but not placed in circulation until several months thereafter, a memorandum presented by the Emperor of Germany to the Secretary of State on the 11th of that month, in which there are stated reasons or grounds held by the Imperial Government for a contemplative coercive or comminatory action against the Republic of Venezuela. In that paper, the purpose of coercion is based on the refusal of the Venezuelan Government to permit that powers, foreign to the nationals, take part in the examination, classification or mode of payment of the claims that various German subjects have presented or reserve the right to present, for alleged losses or damages sustained during the last wars, since 1898. While the text of the memorandum makes unfavorable remarks about the Venezuelan magistrates of the judiciary, whose office it is to pass upon the nature of these claims, it sets forth the resolution of the Imperial Government to present the claims itself as finally examined in order that they be accepted in that form by Venezuela, whether willing or not.

In consequence of the above-mentioned publication, the Government of the Republic is now confronted by a document by which it is seriously affected, and of whose spirit and tendency it was entirely unaware. On the other hand, it had occasion to be surprised at the form of the memorandum, in view of the cordiality that the respect-

able Government of Berlin is imparting to its relations with that of Venezuela; relations in which there had not been theretofore, as proved by the archives of the department of foreign relations, any lack of the evidence of reciprocal sincerity, on which is based the more or less reliable token of culture that may be exchanged among civilized nations.

The paper of the German ambassador, once known to Venezuela, can not be allowed to pass without the protest resulting from its contravening maxims of strict equality that international law advocates as a principle of harmony among the States of the civilized world. From one fact alone, explicable in itself, the imperial official draws his imputations, and from a mere supposition, offensive because inconsistent, it deduces the duty of exercising intervention foreign to the laws in the prosecution and settlement of cases of German subjects. The fact, that is to say, the refusal of the Government to lay aside, on every occasion, the powers of national sovereignty, can be looked upon by no one except in the light of imperative necessity, consubstantial with the very existence of the State, and the aggravating supposition, that is to say, the presumed partiality of the federal court, the body representing the highest judiciary in Venezuela, is not to be considered except as an unfortunate or accidental remark without any foundation in truth, without the slightest reason to defend it. There never was, as seems to be supposed by the ambassador, any of its members dismissed. The change is made, in each case, by virtue of the law, and in the established form for the appointment of new members.

The views and arguments advanced by the Republic since the beginning in its support of its refusal to accept diplomatic action in the settlement of claims of the Empire have never been refuted, not even incidentally. There are on record, in a long correspondence of the imperial legation at Caracas, now for the first time given to the press for a correct appreciation by all friendly Governments, as well as for the foundation for a protest of Venezuela against the manner in which facts are represented in the memorandum of the ambassador. In that series of diplomatic notes the Empire rested its case not only on the law of the country, which, as such, gave sufficient force to the argument, but on the best recognized rules of modern international law on the opinion of eminent European and American writers, on the legislation of other countries, Germany, herself, among others, and on the ideas and circumstances which no fair Government can ignore, when it has to examine claims with due regard to all those concerned. It never was the intent of the Republic, in that correspondence, to impose its will arbitrarily and capriciously, nor did it intend, as the ambassador seems to suppose, to evade sacred obligations in a frivolous manner, but to hold the ground it has stood on since its advent

to political life, for natural and judicious reasons. Obligations are repudiated by declining to listen to the reasons or precedents on which these obligations are founded, not by opening, as Venezuela did, a legal field for their complete fulfillment. The question, therefore, resolves itself into a simple one of form, but if the form adopted were not that provided by its laws, the Republic would see in it something akin to a disregard of the national sovereignty. The Imperial Government, according to the language of the ambassador, wishes to examine and decide for itself, and by itself, the character, amount, and mode of payment of claims connected with property or interests established in the Republic of Venezuela. The Venezuelan Government, supported by its constitution and the regulations, maintains that such procedure can not be granted to any but the respective national powers. The intent indicated by the ambassador evinces, to say the least, an excess of protection contrary to the universal principle of law, which subjects property, real and personal, to the regulations and laws of the country where it is situated. Fair and impartial consideration can find nothing in the attitude of Venezuela except the obligatory exercise of a political power and the discharge of a duty depending thereon. A relinquishment of the same would be tantamount to a denial by the nation of the efficiency of its laws for the due protection of the general interest.

To legislate for the natives only and to leave open for foreigners the application of a special law, enforced through the intervention of representatives from other countries, would expose countries whose destiny is to grow from immigration to degenerate into mere settlements lacking the essential quality of political states, a position they hold in the international concert. Indeed, more than one European statesman has called attention to the flagrant injustice that flows occasionally from the forcible protection of interests that are not absolutely legitimate or which the preconceived intent to take advantage of the internal disturbances of certain foreign countries may have in some way contributed to make apparently legitimate. If by exceptionally waiving the local laws the matter of claims was allowed to be made one of mere diplomatic action, the simultaneous effect might be a constant injury to the internal sovereignty and a ceaseless threat to the national treasury. As it is not to be presumed that the foreign governments and their honorable political representatives may assume judicial powers to establish in the course of a regular trial the true character, the lawful origin of the actual status of any claim, there would be frequent and regrettable occasions to see the high person of state appearing to favor, unwittingly but strenuously, designs inconsistent with either justice or reason.

The memorandum of the ambassador affords in one of its parts the best evidence of the inapplicability of diplomatic action to matters

that appertain to the courts of the country. It cites as a serious argument against the attitude of Venezuela one of the claims submitted to the board for 3,800 head of cattle, the value of which was made to amount to 600,000 bolivars. The data submitted by the claimants showed the demand to be so abnormal that the board could find no ground for an award except in an infinitely smaller sum. The parties in interest were engaged in cattle raising as a part of their business, and supported the main part of their claims with a comparative statement of previous inventories and the subsequent condition in various stock farms, without any other evidence as to the number of oxen than the testimony of three persons, two of them Germans, who witnessed the statement, and a certificate of the imperial consul at Valencia, regarding the original number of cattle in several pasture grounds, some of them owned by citizens of the Republic. The time between the original inventory and the ascertainment of the remainder, showing a loss of 2,652 oxen, all charged to the Republic in the claim, ran, as represented, from the 9th of September, 1899, to the 4th of March, 1900. During the month of December of the first-named year, the Government, as shown by an official document filed in the archives of the ministry of the treasury, purchased 1,000 oxen from the very same stock farm, for which it ultimately paid in cash a much lower price, set by the sellers or the owners of the herd themselves; wherefrom two equally grave inferences may be drawn, to wit, that there were included in the conjectural computation on which the claim rested a large number of oxen previously sold, and that the value of the herd was set down in the memorial at a price nearly double that which was asked by the same claimant in other transactions.

These incidents should suffice to demonstrate the necessity of acting and proceeding, in matters affecting the treasury and in which the judicial responsibility of the nation is invoked as a factor of prime importance, in a manner more consonant with the law and less exposed to an abuse of the status of the claimant. The same firm which the imperial memorandum holds to be so clearly in the right, added in the memorial, to the value of the cattle, fixed *ad libitum*, without any other basis than the opinion of certain military commanders in regard to a slight portion of the same, the enormous sum of 200,000 bolivars, under the head of profit lost on account of the seizure.

It is to be observed that the Venezuelan law which regulates the mode of preferring claims against the nation does not admit testimonial proof unless it can be shown that the officer who caused the damage refused to give the voucher in the case, or that it was impossible to obtain it in good time. Without a formal trial in which interests are involved that have to be defended simultaneously, as



those of the nation and of the claimant are in such case. there can be no regular judgment, unless the alleged right be established *prima facie* by simple and natural conclusion. Therefore the decree of January 24, 1901, which the ambassador's memorandum criticises so sharply, left, with praiseworthy foresight, the way open to all claimants for all just redress.

In the regular intercourse of civilized nations there occurs no difference when the matter submitted to mutual examination is defined or provided for by the absolute principle of national sovereignty. If the class of claims relating to property owned within the territory does not come exclusively under the law of the country it would behoove the other party to prove it by representing such a statement as would upset all maxims, arguments, and opinions advanced by Venezuela. As for the rest, the coercion hinted at in the memorandum would be inadmissible for the lack of the slightest grievance on which to base it; contrary to law, because bent on the achievement of a purpose satisfactorily provided for by the laws of the country, unusual because brought into operation without any alteration of the mutual cordiality between the Government exercising it and that to which it would be applied; and contrary to its intent in its effects, because endangering in favor of a few the interest of others, which perhaps are more worthy of consideration on the part of the Imperial Government, as are those of all respectable Germans settled here, who are so peace loving and always so deeply interested in seeing that no obstacle will be raised against the development of trade between their fatherland and Venezuela.

In laying the just protest of the Republic against the views, imputations, and the purposes of the memorandum of the 11th of December last, before all friendly powers, as well as the German Empire itself, in this document, it is imperative to add that Venezuela, while objecting to the intrinsic animus of the ambassador's communication, finds, and could as an independent nation but find, in the ostensible object of its being represented to the Government of Washington nothing but the rational effect of a political principle of a general character, bearing on the integrity of the rights of the American hemisphere, which must always receive the joint or independent support of all the sovereign republics of the New World, and to which is already due, in part, the organization of the two international congresses convened on the powerful initiative of the Great Republic of the North.

CARACAS, *August 12, 1902.*

The minister of internal relations in charge of the correspondence of foreign relations.

R. LOPEZ BARALT.

## ACCOMPANYING DOCUMENTS.

*Correspondence with the imperial legation of Germany, 1900, 1901, 1902.*

[Translation.]

No. 161.]      IMPERIAL LEGATION OF GERMANY IN VENEZUELA,  
*Caracas, April 11, 1900.*

MR. MINISTER: I have the honor to transmit, herewith, to your excellency, so that you may be so good as to take notice of it, a copy of the communication which the management of the Great Railroad of Venezuela forwarded on the 9th instant, to the minister of public works, a statement, substantiated in detail, of the losses sustained by the said railway in connection with the last civil war until the end of last year. The bill amounts to 780,274.99 bolivars. In view of the fact that the imperial legation has received from other quarters indemnity claims for damages from the same cause, I should be especially thankful to your excellency if you would be so good as to communicate to me, for the provisional information of the interested parties, and as far as it may be deemed practical what are the intentions of the Venezuelan Government in regard to the payment of indemnity claims growing out of the last civil war.

Accept, excellency, the assurance of my most distinguished consideration,

SCHMIDT LEDA.

The most excellent minister of foreign relations of the United States of Venezuela, Dr. ANDUEZA PALACIO.

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No. 606.]      MINISTRY OF FOREIGN RELATIONS,  
BUREAU OF PUBLIC LAW,  
*Caracas, May 10, 1900.*

MR. MINISTER: Your excellency, while mentioning in your polite note of April 11 last, a claim presented to the department of public works by the management of the Great Railway of Venezuela, inquires what are the intentions of the Government in regard to claims for damages caused by the last civil war. The supreme chief of the Republic to whom I have been unable until yesterday to refer your excellency's request, on account of certain matters that have engrossed the cabinet's attention, has declared to me, and I very respectfully transmit his statement to your excellency, that the decree issued on the 23d ultimo, relative to the time when claims growing out of the war shall be received for examination, states the position now held in regard to the matter dealt with in your excellency's note.

I tender to your excellency due apologies for the delay in answer-

ing your note, and at the same time renew to you the professions and assurances of my most high and distinguished consideration.

R. ANDUEZA PALACIO.

The Most Excellent Dr. SCHMIDT LEDA,  
*Minister Resident of the Empire of Germany.*

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[Translation.]

No. 302.]

IMPERIAL LEGATION OF GERMANY,  
*Caracas, May 30, 1900.*

MR. MINISTER: I have had the honor to receive the esteemed note of your excellency of the 10th instant, relative to the settlement of claims growing out of the last civil war.

In the meanwhile I have acquainted my Government with the decree bearing on this subject, which was published in the *Gaceta Oficial* of the 23d of April of this year, and I am instructed to inform your excellency that the Imperial Government can not allow the said decree to influence, in any way, the attitude it may see fit to assume in regard to claims of German protégés.

Accept, excellency, on this occasion, the renewed assurance of my most distinguished consideration.

SCHMIDT LEDA.

The Most Excellent Dr. R. ANDUEZA PALACIO,  
*Minister of Foreign Relations of the United States of Venezuela.*

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[Translation.]

IMPERIAL LEGATION OF GERMANY IN VENEZUELA.

[Pro memoria.—Confidential.]

The minister resident of the German Empire has had the honor to expound orally to the Venezuelan Government the objections of Germany to various dispositions of the decree of the 24th of January of this year, concerning the settlement of claims growing out of the war.

The objections bear on the following points:

(1) The decree admits to examination only such claims as originated since the 23d of May, 1899. Germany desires that claims which arose prior to that date be also taken into consideration.

(2) Under the decree payment of the claims is to be effected by means of certificates of a new debt to be created by the revolution. From the experience of past years this mode of payment does not seem to be acceptable. The German Government rather hopes that it will be practicable to reach, with the Venezuelan Government, an agreement for another mode of payment.

(3) Article 4 of the decree sends the claimants, who may not declare themselves satisfied with the decision of the commission, before the high federal court, in accordance with the provisions of the decree of February 14, 1893.

The German Government is not ready to subject to the provisions of this decree the indemnity claims of its proteges. It would rather have the functions of the commission confined to the examination and proof of the claims, and reserve the final determination of the amount to be allowed to each claimant for a free and amicable arrangement between the Venezuelan Government and the imperial legation.

The sum total of the claims thus far made known to the imperial legation amounts to something like 2½ millions of bolivars. The Imperial Government sincerely cherishes the wish that it will reach, as soon as it can be done, an agreement with the Venezuelan Government concerning these claims, and deems it natural that they should immediately be examined as to their validity by the Venezuelan authorities.

The imperial legation, therefore, will make no difficulty in urging the German claimants to lay without delay their claims before the commission created by the decree of the 24th of January of this year, as soon as an agreement shall have been effected to the effect that the functions of the commission shall be confined to the certification of the claims, but that the final decision regarding their settlement shall be reserved for a direct agreement between the Venezuelan Government and imperial legation, which agreement will have to cover specifically:

- (1) The final determination of the sums to be paid.
- (2) The mode of payment.
- (3) The settlement of the claims dating from a period earlier than the 23d of May, 1899.

CARACAS, *March 8, 1901.*

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MINISTRY OF FOREIGN RELATIONS OF THE  
UNITED STATES OF VENEZUELA.

[Memorandum.—Confidential.]

After careful consideration of the confidential memorandum of the honorable legation of Germany, dated the 8th instant, and presenting its views concerning the decree of the 24th of January last for the settlement of claims growing out of the war, it is found, with regret, that all its remarks revolve around an idea to which it is impossible to assent without detriment to the general principle that secures to every state the right to establish its own domestic legislation. On the one

hand the memorandum tends to deny the judicial validity of the law of February 14, 1873. regarding the manner of preferring claims against the nation, and, on the other hand, endeavors to restrict in a certain sense the action of the Government as affecting the claims submitted to the board of classification, recently created. Such ideas, which amount to making an exception in favor of German interests in the Republic possible, could be entertained if there were two legislations in existence—one intended to govern the interests of the nationals and another relating to the property of foreigners. No long meditation is necessary to realize the grave injury that would be done by such a dual legislation, to the nations, like the greater part of those in America, in whose development foreign immigration and the influx of foreign capital are important factors. In the course of a few lusters the inequality of conditions between natives and foreigners would create numberless difficulties which would go so far as to make national sovereignty a mere illusion of fancy. •

It is a maxim of some logic, demonstrated by science and confirmed by practice, that the most positive results toward the desired social harmony are obtained from equality in the operation of justice. If a state should admit in its statutes governing any one point articles intended respectively for various classes, every judicial doctrine would eventually be overturned by special exemptions and privileges, born of concessions foreign, and even antagonistic, to the political concert of nations. The difference in the civil status between them (the nationals and the aliens) would involve ceaseless conflicts, which could not be kept within bounds, even through the harmonious action of the powers intrusted with the duty of enforcing the law.

The desire to remove forever any apprehension in that respect gave occasion for many important debates in the celebrated international American conferences of 1889–90. It gave birth to the principle of absolute equality of civil rights for nationals and aliens, which received the approval of 15 of the delegations there present, and was immediately embodied in the Venezuelan constitution. The principle not only observes and follows the soundest doctrines of international law, but wards off the grave difficulties that would necessarily arise from the gradual increase of the stream of immigration, which for years has been flowing from Europe to the American regions. The existence of this principle at once guarantees to the foreigner the enjoyment of his property in foreign lands without any greater risk than that shared by all his associates, frees him, to his great material and moral advantage, from any bias on the part of the ruler or the owner of the soil he treads, and makes of him a sound and desirable element, capable of cooperating, for his own good, in the work of general advancement. Hence the law of February 14, 1873,

far from affording the slightest ground for difficulties, constitutes, both in practice and law, the fulfillment of a necessity.

It was communicated to the Government of the German Empire, as well as to all foreign Governments, by means of a note addressed to the Honorable von Gulich on the 22d of that month, under No. 77 of the first division. Its text did not establish the slightest discrimination in favor of the natives, and the judicial body that was given cognizance of claims was then, as it is now, the highest in the Republic, so that it had in view not only the importance of the case, but also the facility of procedure. The promulgation of the laws which affect interests established in the territory is but the operation of immanent sovereignty. No Government or State can protest against such operation without injury to one of the most generally recognized and universally practiced maxims of international law. It would be easy to invoke authorities *ad infinitum* in its support, but let it suffice to name the German Heffter, the Englishman Twiss, and the American Wheaton, all three writers of distinguished renown. The first declares that "the laws of each State govern all property of any nature whatever found within the territory" (paragraph 3811). The second affirms that "the right of civil and criminal legislation touching all property and persons within the territory of a nation is inherent in the right of dominion." He adds: "The laws of each nation bind, of natural right, all property lying within its territory in the same way as the persons residing therein, whether natives or aliens, and govern and regulate all acts performed and all contracts executed within its boundaries" (paragraph 150). Wheaton is just as explicit. According to him (paragraph 78), "the principle under consideration is the immediate consequence of the independence of nations. Every nation," he says, "possesses and exercises exclusive sovereignty and jurisdiction over the whole extent of the territory; whence it follows that the laws of each State govern, of right, all property, real and personal, within its territory in the same way as the inhabitants of the territory, whether natives thereof or not, and affect and regulate all the acts performed or the contracts executed within its boundaries."

The practice of conferring upon the high courts the cognizance of acts that may give rise to claims because attributed to public agents is not exclusively that of Venezuela. The law of judicial organization of the German Empire, promulgated on the 27th of January, 1877, retained the provisions of the States in which it was held that actions against public officers were more or less absolutely subordinated to the previous decision of a superior authority, with the proviso that such a previous decision be confined to determining whether the officer had exceeded his powers or neglected to perform any of his duties and with the additional condition that the decision



be given by the higher administrative tribunal of the State, or in the absence of such a tribunal, by the supreme court of the Empire (article 11).

In his study of the latest imperial legislation, Demonbynes notes (Chapter IV, Section IV) that the civil court takes cognizance in the first instance, among other cases, of claims preferred against officials of the Empire on account of abuse of power or neglect. Further on, dealing with the claims that every State may turn over to the local courts, he cites those preferred against the State itself, on account of measures taken by the administrative authorities or of faults imputed to officials.

Over forty years ago there was organized in the United States the so-called "Court of Claims," to which are referred all the petitions or bills asking or providing for the satisfaction of private claims against the Government, based on some act of Congress, or some contract express or implied, etc. This court has the power to lay down rules for its government; it may punish for contempt, appoint commissioners and exercise such authority as may be necessary to give effect to the powers that are conferred upon it. \* \* \* Its decision in any case prosecuted in conformity to the provisions of the law bars forever any subsequent claim or action against the United States arising from the matter involved in the controversy. (Revised Statutes, sections 1060-1070-1093.)

Indeed this method of dealing with, and deciding questions which, from their nature, can not be conclusively examined in any department of executive power is both wise and practical. The judicial hearing, to which recourse must unavoidably be had in many cases of claims, excludes, or makes impossible, executive action which can not be brought into play except within the bounds defined by law for each concrete case, beyond any formula of investigation. The necessity of resorting, generally, to the procedure indicated by the law of February 14, 1873, lies in the various circumstances of the claims, in the abnormal conditions under which they arise at times, in the objections that may be created by a disposition to exaggerate facts, and in other reasons which demand the attention of the legislators, and were no doubt present to the mind of the editors of the latest civil code of the German Empire, when they laid down in article 254 the following provident rule:

If the aggrieved party should, by some fault of its own, have contributed in causing the damage, the obligation to indemnify and the amount of the indemnity shall depend on the circumstance, especially on that of knowing whether the injury was caused chiefly by one party or the other.

This provision shall also be applicable when the fault of the aggrieved party merely consists in having failed to call the attention of the delinquent to the risk of inflicting injury of which the offense had not or was not bound to have knowledge, or in omitting to evade or minimize the injury.



Article 343 of the same code, on account of its analogy with the subject-matter, likewise seems to be worthy of record:

If the penalty measured should be out of proportion to the injury, the debtor may ask that it be reduced to an equitable amount. In appreciating this amount the court shall take into account not only the pecuniary interest but also any legitimate interest of the creditor.

Prince Bismarck was no doubt inspired by considerations of a nature similar, in a certain way, to that which makes it indispensable to apply judicial proceedings to the investigation of the origin of certain claims and to the proof of their validity when he expressed the view communicated in February, 1884, to the Honorable Mancin by the Count de Launay, and inserted under No. 27, among the documents laid before the Italian Parliament, by the royal ministry of foreign relations, on the 6th of December, 1894. "The Prince" wrote de Launay "refrains as much as possible from injecting the policy of Germany in anything that may smack of intervention in favor of speculators who undertake transactions in a foreign country, with a full knowledge of doing so for their account and at their risk." And while the respectability and the manly deportment of the Germans settled in this country could not suggest the idea that, in regard to their claims, there could exist cases like those which the eminent German statesman had in mind, this view goes far, on account of its scope and practical import, to add great strength to the reasons on which the legislator based his action when he gave to the highest judicial body of the country cognizance of the claims preferred by the nationals or the foreigners.

The foregoing makes it clear that the law of February 14, 1873, apart from the undeniable right with which it was promulgated, from the weighty precedents that sanctioned it, and from its value as integral part of the domestic legislation of Venezuela, combines the only conditions of procedure that are available to prosecute any claim against the Republic by the way of justice.

If a departure was made in 1893, and at the present time, from its provisions, and a special rule established for the examination and classification of the claims growing out of the war, the fact finds its explanation beforehand in the exceptional character of the case which was the transformation into a Government of what had originally been a revolution.

As soon as the claims presented by German subjects should come to be examined under other conditions than those provided by statute for the others, the doctrine maintained by Venezuela touching the equality of civil rights for natives and aliens, and which is part of her constitution, would receive a severe blow. Neither the law of February 14, 1873, nor the decree of January 24 last can operate adversely to the rights of those who propose, or have, to prosecute

claims growing out of the recent war, all the less as the procedure indicated for all those that may be submitted to the board of classification must prove uniform in its course and effects. Moreover, the Government foreseeing cases exceptionally of a negative character, has left the judicial way opened, with its well-known rules, to all those who may propose or believe themselves entitled to the redress of some right.

By reason of these practices and principles and of the situation necessarily created by them, it is unable to concur in the views of the respectable imperial legation concerning the alleged inefficiency of the law of 1873 for the purpose of passing upon applications of this character, nor is it practicable to assent, in regard to the German claims growing out of the last war, to the proposition of restricting the action of the board of classification that is to take cognizance of them, and as for the claims anterior to the 23d of May the same law of 1873 points out the way.

CARACAS, *March 19, 1901.*

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[Translation.]

No. 190]      IMPERIAL LEGATION OF GERMANY IN VENEZUELA,  
*Caracas, March 24, 1901.*

MR. MINISTER: I have seen with regret, from the esteemed confidential memorandum of the 19th of this month, that the Venezuelan Government is not disposed to enter into an agreement for the settlement of German claims growing out of the last civil war in the manner that I had suggested, in accord with my Government, in my memorandum of the 8th of this month. Under the circumstances, I have been instructed by my Government to declare, that, as regards the interests of its protégés it finds itself constrained to refuse its assent to the decree of the 24th of January of this year, relative to the organization of a commission for the examination and determination of the claims. This dissent also applies to the executive decrees of February 14, 1873, and June 9, 1893, whose dispositions can not be considered as binding by Government in the settlement of the German claims.

While having the honor to bring the foregoing to the knowledge of your excellency, in obedience to the Imperial Government's instructions, I avail myself of the opportunity to renew to your excellency the assurance of my most distinguished consideration.

SCHMIDT LEDA.

The Most Excellent Minister of Foreign Relations to the United States of Venezuela, Doctor BLANCO.

No. 404.]

MINISTRY OF FOREIGN RELATIONS,  
BUREAU OF FOREIGN PUBLIC LAW,  
*Caracas, March 30, 1901.*

MR. MINISTER: In replying to your note No. 190, of the 24th instant, I can not conceal from your excellency the surprise experienced by the chief of the executive and the whole Government on finding that it made no mention of the principles of international law which warrant and vindicate the dispositions taken by the Venezuelan Government in the matter of claims for acts imputed to officers who act or have acted in their public capacity. The honorable German legation, ignoring all the views, precedents, and arguments set forth in the memorandum of the 19th, and which affirm the principle of strict sovereignty on which Venezuela based her promulgation of the existing regulations on the subject, comes out, in its reply of the 24th, with a denial, in the name of its Government, of the validity of the long-standing laws of the Republic, without any other ground in justification thereof than that which might be taken in an effort to create a discrimination, objectionable because prejudicial, unjust and anti-judicial, between the foreigners who come to a country and the natives of that country.

It can not escape the enlightened judgment of your excellency, or the learned discernment of the Imperial Government, that it is impossible to admit, in the order of relations that regulate and maintain the moral intercourse of nations, practices or principles apt to redound to the detriment of the domestic sovereignty of one of them. Hence does the Government of the Republic, while it fully appreciates its harmonious relations with Germany and values as a most beneficial factor the gradual increase in this territory of the population coming from the Empire, deems it imperative to reaffirm its resolution to abide by its domestic legislation in all that appertains to this question or other similar ones. By any other course it would create the possibility of imparting a double character to the judicial effects of the existing institutions, thereby weakening the maxims best known to and most practiced by the family of nations and impairing the sovereignty of the Republic. And thus, while reiterating, as it does, the categorical views of the memorandum of the 19th of March, it finds itself in a position where it must declare itself that it can not admit any opinion which does or may involve the slightest disavowal of the right that Venezuela had to enact the several parts of its domestic legislation. Among these are included the decree of February 14, 1873, that of June 9, 1893, and that of the 24th of January last, none of which can be considered in conflict, but rather in conformity with the principles on which rests the public law of nations.

The perfect accord that has always happily existed and must continue to exist between Venezuela and Germany will manifest itself on

this question as efficiently as on all others, by means of a simple reconsideration of the circumstances that distinguish it and of the arguments that put it in its true light.

Accept, excellency, the renewed expressions and assurances of my highest and most distinguished consideration.

EDUARDO BLANCO.

The Most Excellent Mr. SCHMIDT LEDA,  
*Minister Resident of the Empire of Germany.*

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[Translation.]

No. 428.] IMPERIAL LEGATION OF GERMANY IN VENEZUELA,  
*Caracas, July 16, 1901.*

MR. MINISTER: In compliance with the desire expressed by the Provisional President of the Republic in the conference I had the honor to have with him on the 11th of this month, I take the liberty of repeating to your excellency, herein below, in writing, the proposals I have had the honor to lay orally before your excellency, as well as before the Provisional President of the Republic.

I have to restate here to your excellency the motives that have led the Imperial Government to the opinion that the method devised by the Venezuelan Government for the examination and classification of the claims of German subjects, who have suffered in their property or interests during the last civil wars, is not in accord with the position the German Empire has the right to take for the protection of the interests of those of its subjects who live in foreign countries. These motives were sufficiently discussed in the memorandum of the minister resident of the Empire, Dr. Schmidt Leda, dated the 8th of March of this year.

If, at the stage reached by the discussions had on this subject, I nevertheless now make an effort to prevail upon the Venezuelan Government to accept the proposals that meet the just desires of the Imperial Government, and are in every way to be considered as an equitable solution of the question, it is chiefly because I did not wish, for my part, to leave anything untried in order to bring to an end a situation that is awkward for the friendly relations of our two countries.

The proposal which I already had the honor to make orally to your excellency is as follows:

The Venezuelan Government on the one part, and the imperial legation on the other, would each name an arbitrator, so that both would jointly examine the claims of German subjects growing out of the civil wars.

Whenever the arbitrators should agree the payment of the indemnity would be effected without any delay whatever, and all cases in which the arbitrators could not come to an agreement would be

made the subject of special conferences between the Venezuelan Government and the imperial legation. If these were likewise barren of result, then the matter would in advance be deferred to the arbitral tribunal of The Hague for a decision.

While believing that this, my proposal, meets all the demands of equity, I would nevertheless lay special stress on the point that, should the Venezuelan Government have any reason whatever for not being suited with it, I stand ready to accede to any other solution of the question by which the cooperation of the authorities of the Empire in the examination of the claims of German subjects and in the determination of the indemnities appertaining thereto will be assured. Such a cooperation is the only foundation on which a solution of the question can be established.

While emphasizing, in conclusion, the fact that the Imperial Government attaches the greatest importance to a satisfactory solution of this matter, permit me to express the hope that your excellency's high Government will not allow my effort to reach an agreement on this point to go in vain.

I avail myself of this opportunity to renew to your excellency the assurance of my most distinguished consideration.

VON PILGRIM BALTAZZI.

The Most Excellent Dr. EDUARDO BLANCO,  
*Minister Resident of Foreign Relations of the  
United States of Venezuela.*

No. 898.]

MINISTRY OF FOREIGN RELATIONS,  
BUREAU OF FOREIGN PUBLIC LAW,  
*Caracas, July 23, 1901.*

SIR: The Government has given the most careful attention to the contents of your note of the 16th of this month of July, No. 428, from which it could infer or confirm the necessity of submitting to a concrete criterion a question that, from its origin, circumstances and effects requires nothing but an examination in a strictly judicial sense, easy of interpretation, and simple in results. This department means to avail itself of such a criterion in its reply to the memorandum that your worthy predecessor handed on the 8th of March last, touching the position of the legation in the matter of the claims of German subjects, and holding that there is no better method for reaching the concurrence of views which the Venezuelan Government desires, and you yourself urge, it earnestly desires that you resort to it.

You say that notwithstanding the stage reached by the discussion of this matter, you nevertheless endeavor to bring the Venezuelan Government to an acceptance of earlier proposals; a proposition to which this ministry can not ascribe the meaning that you seem to want to give it, for there is, properly speaking, no formal controversy

thus far, since the correspondence has gone no further than a statement from Dr. Schmidt Leda, and the arguments offered by the Government of the Republic, and as yet unrefuted, even in part, by the honorable imperial legation.

The essential point now dealt with, and for the first time advanced by you, is one of transcendent importance to Venezuela, for it touches upon nothing less than our domestic legislation, with whose spirit the national sovereignty is closely bound. Any action or cooperation foreign to this spirit would tend to impair principles with which you are perfectly acquainted, which this ministry set forth and expounded in its memorandum of the 19th of March, and which are observed by all the nations, without any reservation whatever, because in them international concert finds its greatest guarantee.

If nations should legislate for certain classes and the others were given the right to claim protection other than that which the organized local powers are bound to extend, there would be no means of establishing that uniformity of obligations which is the foundation of civil order, and which is, logically, the consolidation of the duties of the members of a community. Venezuela depends on a legislation that is ample in the sense of protecting the interests of all, and the provisions that precisely regulate the prosecution of claims against the nation afford abundantly adequate guaranties for the obtainment of just indemnities.

You could find in the texts which this ministry had the honor to invoke on the 19th of March, in favor of the efficiency and validity of the domestic legislation for the claims under consideration, the evidence of the duty imposed by the international law itself upon the Governments, to treat the nationals and aliens, within the civil spheres, on terms of absolute equality. You could also see in the body of the memorandum how all the precedents of a legal order coincide, both in Germany and the United States, in affirming the action of the courts, not that of the executive power, in cases analogous to that which is discussed in this correspondence.

You will realize the difficulties that would arise in any trial in open court from the intervention of any power which would be unable to follow the proper procedure for the thorough investigation of the alleged facts. Hence spring the necessary separation of powers and the resulting limitation of duties. It is not a disregard on the part of the General Government of the concerns of the nation, or an evasion of the results of its obligations, but the necessity to safeguard the domestic sovereignty embodied in the national laws. So that, as to the point made by you in your note of the 16th, there is no difference other than that concerning the ways and means which each party advocates to arrive at the identical end of making fair reparation for injuries suffered by the act of lawful authorities in the exercise of



their public office. You insist that the cooperation of the authorities of the Empire in the examination of claims must be guaranteed, and Venezuela, on behalf of her sovereignty, and virtue of her domestic legislation, maintains that such cooperation is wholly inadmissible. The apparent dissent lies, not in the object aimed at, but in the manner of attaining it. The most perfect agreement is therefore at hand if the matter be only subjected to the circumstances that define it under the operation of international law.

Among the cases examined and classified by the board extraordinarily organized on the 24th of January last, there are several in which German subjects are concerned, as you may see in No. 8262 of the *Gaceta Oficial*. Those that have thought that their interests would be better subserved by keeping away from the legal remedy or recourse need not bring forth any outside action in order to carry their rights or allege some other circumstances. There remains open to them the easy or expeditious way that may or must make fair reparation for them.

It would be impossible to admit them to any privilege that would impair the rights of the other foreigners and of all the nationals. If the end that is sought is to be in harmony with the rights of all, the way to it must be in equal conformity with the principle of justice. And inasmuch as these were, more or less, the arguments offered you by the President in the conference of the 11th, in repeating them here I carry out the instructions of the Chief Magistrate that I shall express the hope that, upon reconsidering the case, you will accept the grounds on which the Venezuelan Government declines to assent to the proposed intervention of the legation in the conduct of a matter which, far from exposing the interested parties to danger if they trust the procedure of domestic legislation, will always find therein the assurance of being examined in accordance with the most strict precepts of reason and justice. ?

The earnest desire of the Government of the Republic to maintain the most satisfactory accord with that of the German Empire on all points that may come up for elucidation between them, moves this ministry to insist upon the foregoing ideas, not from any purely doctrinal point of view, but for the sake of mutual cordiality, which is so necessary and advantageous when the discussion bears, not on ephemeral matters, but on everlasting interests, as are those which are identified with the stability of the law of the country, for the good of the foreigners themselves who hold their property in the Republic.

I take pleasure in renewing to your excellency the assurances of my most distinguished consideration.

EDUARDO BLANCO.

The Hon. VON PILGRIM BALTAZZI,

*Charge d'Affaires of the German Empire.*



[Translation.]

No. 927.]      IMPERIAL LEGATION OF GERMANY IN VENEZUELA,  
*Caracas, December 31, 1901.*

MR. MINISTER: Several Germans have filed in the imperial legation claims for the damages growing out of the last Venezuelan civil wars. These claims have been carefully and thoroughly examined, first by me and then by my Government. As a result, the total amount of the claims that have been found valid aggregates 1,718,815.67 bolivars.

The several indemnity claims are set forth in the accompanying statement. The documents and declarations of witnesses therein mentioned and addressed, in justification of these claims, are sent herewith in certified copies. The originals of these documents are in the imperial legation.

By direction of my Government I beg that your excellency will see to it that the sum of 1,718,815.67 bolivars be paid to me in satisfaction of these claims.

Accept, Mr. Minister, on this occasion, the assurance of my most distinguished consideration.

VON PILGRIM BALTAZZI.

The Most Excellent Minister of Foreign Relations of the United States of Venezuela, Gen. JACINTO R. PACHANO.

No. 23.]      MINISTRY OF FOREIGN RELATIONS,  
BUREAU OF FOREIGN PUBLIC LAW,  
*Caracas, January 8, 1902.*

SIR: As the matter referred to in your note of the 31st of December, No. 927, has already been the object of special correspondence with your legation, and as the arguments advanced by the Government to demonstrate the impossibility of giving diplomatic examination to what appertains to the domestic legation of the Republic have not been considered, and much less refuted by the legation, the actual reason for your request relative to the payment of the sum in which you estimate the amount of the German claims can hardly be discovered. The executive power does not believe, nor is it even presumable, that one of the most enlightened governments of Europe, as is that of the German Empire, and one of the most respectable missions, as is that which it has accredited to Venezuela, will pass upon the merits of a case before examining all its circumstances jointly with the party whose business it is to give it a legal course. Since the date of the reply to the memorandum of the most excellent Dr. Schmidt Leda, and of the note addressed to him on the 30th of March last, you have had a conversation with the President of the Republic, in which he advanced new arguments in the same sense which my predecessor repeated in his reply to your note of the 16th of July.

No objection was ever made by the legation to the ideas there expressed; and the very circumstance that it was then stated that several of the German claimants had complied with the provisions of the decree of January 24, 1901, led to believe that the discussion was closed, and that the other claimants would vindicate their rights in accordance with the procedure laid down in the legislation bearing on the special subject. At any rate, and with a view of satisfying you as to the attention with which the Government has considered the general question of claims, it will suffice that I make a statement relative to this very concrete case of the German interests. Besides paying to the company of the Great Railway of Venezuela the sum of 113,527.44 bolivars for transportation furnished during the present administration, and admitting in its favor the further sum of 887,632.90 bolivars on account of claims presented to preceding governments, payments on that account in the amount of 290,000 bolivars have been effected, with the firm intention of continuing to extinguish the debt according to the agreement.

The German firms of Steinworth & Co., Brewer, Moller & Co., and Van Dessel & Co., of San Cristóbal, and that of A. Ermen & Co., of Puerto Cabello, which submitted their vouchers in good time, and with which arrangements were effected relative to their respective claims, have received the balance of the same, amounting for the four to 369,959.41 bolivars. The board of examination and classification created by the decree of January 24 awarded various amounts in favor of the German subjects, Beckman & Co., Becker, Brun & Co., A. Ermen & Co., M. Freym, R. and O. Kolster, Lesuer Romer, and Baasch and Marcus & Co.

It is seen from the foregoing statement that, in spite of the trying circumstances that the Venezulean treasury has undergone, General Crespo's government has paid large sums of money on account of allowed claims of German subjects. If a few saw fit not to avail themselves of the provisions of the decree of January 24, 1901, it was probably owing to some defect in the evidence or to a purpose, wholly unacceptable, of seeking payment through a channel other than that of the constitutional law of the Republic, which would result in obvious injustice to the subjects of His Majesty themselves, since the change of procedure would suppose certain prerogatives in favor of those who have not observed the directions of the law, as against those who have abided by its provisions.

In that decree justice and foresight were carried to the point of leaving the field open to those who might not adhere to the decisions that would befall their claims, for seeking the enforcement of their rights through the action natural in every case that can be prosecuted in accordance with the law. The supreme court of the country is precisely that which is intrusted with such action and thus its decisions

afford, in advance and in a singular manner, the guaranty of the law and the security of justice. It would be impossible to take any other course without throwing in the utmost confusion one of the most important branches of the public administration. It would be enough to establish in that respect the slightest precedent contrary to the law of the country, to turn all the respectable legations accredited to the Republic into mere bodies of ascertainment to the detriment of their own high functions and to bring down the Federal Executive to the station of a mere payer of claims, adjusted by a power other than his, without further examination or proceedings. You are aware that, in the matter of claims, justice requires that all the circumstances connected with each case shall be investigated, that certain particulars shall be looked into comparatively, that the evidence shall be scrutinized and that the other formalities shall be observed which, in default of the courts, can only be performed by special bodies like that created by the decree of January 24, 1901.

As the Government can not find within the sphere of its powers the means of solving the question preferred by you in your note of the 31st of December, and as it believes at the same time that there may be valid claims that were not presented in good time for justifiable reasons, it has decided to lay the matter before the congress at its next sessions. In the meanwhile, and in view of the fact that the papers and other accompaniments sent by you are not originals but mere copies, they will be kept here as part of the note I have had the honor to answer.

Be pleased to accept, sir, the renewed assurances of my distinguished consideration.

J. R. PACHANO.

The Hon. VON PILGRIM BALTAZZI,  
*Chargé d'Affaires of the German Empire.*

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[Translation.]

No. 80.]      IMPERIAL LEGATION OF GERMANY IN VENEZUELA,  
*Caracas, February 13, 1902.*

MR. MINISTER: In reply to your excellency's note of the 8th of last month, which I have communicated to my Government, I have the honor to say, by its direction, as follows: My Government takes the standpoint that the provisions of the national law of Venezuela can not restrain it from presenting the valid claims of its subjects against the Venezuelan Government. It considers as valid the German claims presented in my note of December 31, and upholds them in all their import. As to the manner in which the Venezuelan Government will place itself in a position to meet its obligations, it is left for it to

decide. With regard to the evident straitened circumstances of Venezuela, my Government is willing to have proper patience for a short while. It expects, however, an early and full settlement of its claims, and reserves, therefore, to itself to soon take up the subject anew.

Accept, Mr. Minister, on this occasion the assurance of my most distinguished consideration.

VON PILGRIM BALTAZZI.

No. 232.]

MINISTRY OF FOREIGN RELATIONS,  
BUREAU OF FOREIGN PUBLIC LAW,  
*Caracas, February 18, 1902.*

SIR: Inasmuch as you say in your note of the 13th instant, No. 80, that your Government holds that the provisions of the national law of Venezuela can not restrain it from presenting the valid claims of its subjects against the Government of the Republic, it is to be presumed that the legation did not communicate to its immediate superior the reasons taken from international law, together with those taken from the law of the country, which this ministry submitted in the name of the executive power, to show the impossibility of withdrawing, even for a moment, the general class of claims from the action prescribed by the laws of Venezuela. There is reason to believe that if the arguments offered to you and your worthy predecessors had been considered by the Government of Berlin, it would not have taken so absolute a position, or at least would have prepared itself to refute the doctrine maintained by Venezuela.

In the intercourse of nations, especially when the relations are so cordial and of so long standing as those cultivated by the Republic and the Empire, it does not seem possible that each party can enforce its own ideas in regard to matters coming under the jurisdiction of the others. This would be tantamount to give to the will of the State that would advance such ideas extraterritorial effects, in entire contradiction of the doctrine established and upheld in a categorical manner by public law. And, if it should happen that the nation advancing such pretensions be one of the greatest in population and resources, the intent would prove even more incomprehensible, for it would mean that, in the reciprocal intercourses of nations, contrary to the rule proclaimed by civilization, the superiority of physical power annuls the political equality of States, without which principle all the rulings of international law would be illusory in effect.

Be pleased to accept, sir, the renewed assurance of my most distinguished consideration.

J. R. PACHANO.

HON. VON PILGRIM BALTAZZI,  
*Chargé d'Affaires of the German Empire.*

[Translation.]

No. 261.] IMPERIAL LEGATION OF GERMANY IN VENEZUELA,  
*Caracas, May 5, 1902.*

**MR. MINISTERIAL DIRECTOR:** By direction of my Government, I have the honor to say to your excellency, in reply to the note of February 18, of this year, which was communicated to it word for word, as were all the previous ones of the Venezuelan Government, as follows:

My Government, with a full knowledge of the arguments advanced by the Venezuelan Government, has approved the position stated in my note on the 13th of February, and does not understand how the Venezuelan Government came to suspect that these arguments were kept from it by the Imperial legation.

It insists, on the other hand, that the provisions of the national laws of Venezuela can not restrain it from pressing valid claims of its subjects against the Venezuelan Government. If the latter objects that the diplomatic prosecution of such claims constitutes an attack on the domestic legislation of the country, and is therefore inadmissible under the principles of international law, my Government for its part holds that the domestic laws of Venezuela which, in such cases, bar diplomatic representations, are not consonant with the principles of international law, since, according to the view maintained by the Venezuelan Government, every form of diplomatic intervention could be barred by means of national legislation. My Government believes that the claims under consideration must be settled through the diplomatic channel, because the procedure adopted by the Venezuelan Government does not disclose adequate guaranty of a satisfactory settlement of those claims. Besides, on previous occasions, as, for instance, the settlement of the claims growing out of the Venezuelan civil war of 1892, the German claims were settled by means of diplomatic arrangements between the two Governments.

My Government therefore maintains the demand it has made, and cherishes the hope that the Venezuelan Government will give satisfaction to the claims of the German claimants for their full amounts, and in a manner consistent with the friendly relations that have heretofore existed between the two countries.

Accept, Mr. Minister Director, on this occasion, the renewed assurance of my most distinguished consideration.

VON PILGRIM BALTAZZI.

The Most Excellent Ministerial Director at the Ministry of Foreign Relations of the United States of Venezuela, Mr. MANUEL FOMBANA PALACIO.

No. 619.]

MINISTRY OF FOREIGN RELATIONS,  
BUREAU OF FOREIGN PUBLIC LAW,  
*Caracas, May 9, 1902.*

SIR: I have the honor to refer to your note No. 261, dated the 5th instant.

It deals with the subject of claims; and as it might be said that, on this point, the Venezuelan Government has already sufficiently expressed its sentiment and set forth at great length the reason which justify it, the President, to whom I communicated without delay the contents of your note, believes that it will be sufficient to give a brief explanation of the three points or views therein indicated, in order to bring the Government of the Republic and the honorable Imperial legation to a perfect accord in regard to the judicial impossibility to admit diplomatic intervention in matters defined, as that is, by laws of the country.

You say that, against the allegation of the Venezuelan Government that such intervention is contrary to the law of the country, and therefore inadmissible under the international law, the Imperial Government holds that national laws which exclude diplomatic intervention are not in harmony with international law, because, according to the view of the powers of the Republic, all intervention of this character could be barred by means of municipal legislation. A consideration of this difference suggests the supposition that in the appreciation of the arguments advanced by Venezuela since the memorandum of March 19, 1901, no account has been taken, involuntarily, perhaps, of the correlative train of ideas, for the series of arguments used by the Government in the course of correspondence to demonstrate the validity of the statutes enacted by the Republic in this connection was, from the very first, taken from the international view point even more than from the national. It would be tedious to reproduce here the doctrine of the European and American writers and statesmen who, together with the precedents established by the most sober and civilized nations, Germany among them, were invoked all along in support of the law that governs the general question of claims in Venezuela. It would be equally unnecessary to repeat the maxims and arguments that the ministers of foreign affairs had occasion to adduce in order to confirm the principle of sovereignty, unmovable of itself, with which the Venezuelan State inspired that part of its legislation.

Your language does not purport (at least we must think so) that there are two international laws—one for certain nations and another for the remainder. But even though it were so, to the shame of justice, it would still remain incomprehensible how Germany, after subscribing in her treaty with Colombia (article 20) to the exclusion of any diplomatic intervention in claims or complaints regularly



examined or prosecuted in accordance with the law of the country, should now deny to Venezuela (who has likewise subscribed to it with other European nations and has tacitly made it a part of its constitutional regulations) the right to maintain it in regard to one of the questions in which the fair and free application of the law is most needed in order to avoid damages and difficulties of mutual consequence, and even to strengthen the reciprocal interests relating thereto.

Another idea indicated in the note is that the procedure established by the Venezuelan Government does not disclose adequate guarantees of a satisfactory settlement. This discloses, to a certain extent, besides an imputation serious in its form and inadmissible, because baseless, a tendency to acknowledge that external action is more efficient than the legitimate vigor of the law. The German Empire is precisely one of the political states that have most justly won general applause and admiration for the spirit of harmony it managed to infuse in its common law in order to maintain in all its provisions that amount of respectability and importance that is commensurate with its purpose; and it is certain that the Government of His Majesty, charged with the duty of watching over the prestige of that legislation, would never allow without a protest another power to claim for some foreign influence any superiority or priority over the domestic jurisdiction. Such might be the impression created by your language. For Venezuela to admit that diplomatic action is superior to the operation of her laws would be like a contravention of the privileges of her indispensable sovereignty.

You state, lastly, that on previous occasions the claims of 1892, for instance, the German cases were settled by means of diplomatic arrangements between the two Governments. In this there must be some misapprehension, for there is no record whatever in the part of the archives of this department relating to the German Empire of any diplomatic convention concluded for that purpose. It appears, on the contrary, that on the 3d of December, 1893, this ministry represented to one of your predecessors the impossibility to intervene, as requested, for the payment of a claim presented by the German firms of Max Reinboth & Co. and Christian Ritter, of Puerto Cabello, on account of losses suffered during the war of 1892. The case was turned over to the board referred to in the decree of June 9 of that same year, 1893, by which the method of classifying such claims was established. With a view of finding what relation your statement possibly had with the facts, I applied for information to the department that had charge at that time of that class of business, and the data supplied by it showed that the cases presented by German subjects were classed by the board and settled with the same kind of bonds as those in which the debt of the revolution was converted.

So that the proceedings taken in regard to the classification of those cases were in nowise different from those followed in regard to the claims of the Venezuelans; and if the legation eventually took any part therein it was merely that of receiving, in the currency provided for the payment of all, the amounts allowed and classified, without the slightest derogation to the decrees that regulate the examination and proof of the claims of that period. The action of the board and the validity of the decree of June 9, 1893, were then and there recognized, according to the record on file in the archives of the ministry of finance. The list presented by the Imperial legation was nothing more than a copy of the corresponding part of the general books of the board of examination.

The President, who looks upon the German population settled in the Republic as an element of salutary influence, is positive that, if the protection of the Venezuelan legislation is appealed to, their action would not find the action of justice wanting. And as the greater right always carries in law the speedier adjustment, those who will adapt their pretensions to the dictates of equity have little reason to fear unsatisfactory results. Moreover, there can never arise between Governments so friendly united as those of Venezuela and Germany, any occasion of quarrel from any decision that may be legitimately taken in conformity to proceeding consistent with the sovereignty of the nation.

Accept, sir, the renewed assurances of my most distinguished consideration.

MANUEL TOMBONA PALACIO.\*

HON. VON PILGRIM BALTAZZI,

*Charge d'Affaires of the German Empire.*

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[Translation sent by the legation of Germany.]

[L. S.]

No. 825.]

CARACAS, *December 7, 1902.*

MR. MINISTER: In the name of the Government of His Majesty the Emperor of Germany, I have the honor to make to the Government of the United States of Venezuela the following communication:

The Imperial Government has in good time taken knowledge of the note of the ministry of foreign relations of the Republic of Venezuela of the 9th of May last. By that note the Venezuelan Government rejected the demands of the Imperial Government in respect to the payment of the German claims growing out of the civil wars from 1898 to 1900 and, in support of its negative attitude, referred to arguments previously advanced. The Imperial Government, even after considering those arguments anew, does not think it can recognize them as probatory.

The Government of the Republic argues, in the first place, that by reason of the domestic legislation of the country, the settlement by diplomatic action of the claims of foreigners growing out of the wars is not admissible. It thus sets up the theory that diplomatic intervention may be barred by domestic legislation. This theory is not in conformity with international law, since the question of deciding whether such intervention is admissible is to be determined not according to provisions of domestic legislation, but in accordance with the principles of international law.

The Venezuelan Government, aiming to demonstrate that the diplomatic prosecution of claims is inadmissible, further cites article 20 of the treaty of amity, commerce, and navigation between the German Empire and the Republic of Colombia of the 23d of July, 1892. But this argument does not seem to have weight, first, because the treaty is operative between the Empire and Colombia only, and, besides, because section 3 of the said article in nowise opposes the diplomatic prosecution of German claims growing out of acts committed by the Colombian Government or its agents. The statement of the Venezuelan Government that foreign claims growing out of Venezuelan civil wars have never been settled by diplomatic negotiations is likewise incorrect. For, besides the respective agreements concluded by Venezuela with France in 1885 and with Spain in 1898, there was signed on the 6th of February, 1896, a formal agreement between the then German minister at Caracas and the Venezuelan minister of finance, both commissioned by their respective Governments, for the settlement of the German claims growing out of the civil war of 1892.

No greater weight can be attached to the further objection of the Venezuelan Government—that is, that the diplomatic prosecution of the present claims is inadmissible because the said Government has left a way open for their settlement by the decree of January 24, 1901—for the procedure provided by the decree did not, as the Government has been repeatedly been informed, afford a guaranty that those claims will receive a fair solution. In the first place, the claims originating at an earlier period than the 23d of May, 1899—that is, prior to the accession of the present President of the Republic—are not, under the decree, to be taken into consideration, whereas Venezuela will be materially held responsible for the acts of its preceding Governments. Next, any diplomatic intervention in the decisions of the commission is barred, no other resource than an appeal to the high federal court being admitted, notwithstanding the fact that has been proved in various instances that the judicial officers are depending on the Government and, when the occasion arose, have been dismissed from their offices without any formality whatever. Finally, the payment of such of the claims as might be allowed, as established

by the commission, is to be effected in certificates of a new debt of the revolution to be created for the purpose, which certificates, judging from past experience, would be practically worthless.

As a matter of fact, the procedure followed by the Venezuelan Government has not brought about a satisfactory adjustment of the claims. In particular, the few German claims submitted to the commission have been in part simply thrown out and partly cut down in an obviously arbitrary manner. There is more, the allowed claims have not been paid, but the aggrieved parties have been compelled to submit to a bill that was to be introduced in Congress.

After failing in various attempts to induce the Government of the Republic to amend the decree in the points herein mentioned, the German Government could do no less than to have the claims of the subjects undergo its own examination and to present at once to the Venezuelan Government those that it had found to be valid.

It is true that since then the Venezuelan Government held out the prospect of obtaining a favorable solution of the matter from its Congress. But the law passed by that body in the beginning of the year goes no farther than to repeat the insufficient provisions of the decree of January 14, 1901, in addition, only embraces the claims that could not be submitted to the commission in good time.

Presently the Government conducted the subsequent correspondence in a quasi-insulting tone, and finally published the notes dealing with the subject, among which were some marked "confidential," without the consent of the Imperial Government, accompanying the publication with a memorandum couched in offensive language.

Notwithstanding the Imperial Government's desire to maintain with the Republic of Venezuela the friendly relations that have existed heretofore, and while it is far from contemplating any disregard of the sovereignty of the Republic, or any meddling in its domestic institutions, it can not but perceive in the course taken by the Venezuelan Government an intent to deny to the German claims the satisfaction to which they are entitled under the international law and believes it, therefore, its duty to take positive action toward an immediate settlement of those claims.

In consequence, the Imperial Government has instructed me to ask that the Venezuelan Government will see to it, without delay, that the German claims which, according to my note of the 31st of December of last year, amount to 1,718,815.67 bolivars, shall be paid.

Furthermore, the treatment accorded by the Government of the Republic to the German claims growing out of the last wars, has led the Imperial Government to believe that the other claims of its subjects against the Republic require protection in order to arrive at a fair solution. As coming under this head there are to be considered the German claims growing out of the present civil war, the sums due

to German firms on account of the construction of the slaughterhouse in Caracas, and the amount due to the Great Railway of Venezuela for interests on and amortization of the certificates of the 5 per cent Venezuelan loan of 1896, which it received by way of guaranty of interests. By order of the Imperial Government I have also to ask that the Venezuelan Government will forthwith make a statement in the sense that it recognizes, in principle, those claims as valid and that it is disposed to accept the decision of a mixed commission for the purpose of having them determined and guaranteed in every particular.

His Majesty's Government hopes that the Government of the Republic will meet the just demands of Germany, and will not compel the Imperial Government to take the satisfaction of the same in its own hands.

At the same time, the Imperial Government deems it its duty not to fail to mention that it has been acquainted by the British Government with the latter's claims against Venezuela, and that the two Governments have agreed to take joint action toward securing satisfaction of all their demands.

I have the honor to append a Spanish translation of the foregoing and avail myself of this opportunity to renew to Your Excellency the assurance of my most distinguished consideration.

VON PILGRIM BALTAZZI.

The Most Excellent R. LOPEZ BARALT,  
*Minister of Domestic and Foreign Relations*  
*of the United States of Venezuela.*

No. 1436 bis.]

MINISTRY OF FOREIGN RELATIONS,  
 BUREAU OF FOREIGN PUBLIC LAW,  
*Caracas, December 9, 1902.*

SIR: On the evening of the 17th instant, a holiday, there came to my private residence the employee of the chancellery of your legation, charged to deliver in my hands an official note of that date, signed by you, marked with the number 825 and accompanied by a Spanish translation. It was through an act of extreme courtesy on my part that I accepted the delivery of that note under such circumstances.

The note refers to previous correspondence of this ministry, with the imperial legation, touching various claims of German subjects, and winds up with the conclusion that an immediate settlement is necessary and that Venezuela is to be constrained in that sense, in the name or by the order of the Government of Berlin. As the note consists of distinct parts, viz, that which contains the review of precedents and that which sets forth the conclusions, the Government of the Republic, after giving it the mature and earnest consideration demanded by its context, finds it unavoidably necessary to bring out in the fore part



the points open to rectification before proceeding with a clear recital of the Federal Executive's purpose and wishes to reconcile the essential object of the note with the circumstances that jointly bear on the matter under discussion.

It takes up, as being the only argument of Venezuela against diplomatic intervention in matters of certain nature, that which was concretely stated in the reply of May 9, in which the whole doctrine set forth in the previous correspondence was passed by, because a repetition of it was deemed unnecessary. And, inasmuch as the very highest principles of international law have precisely been taken for a foundation of the defense of the position of Venezuela presented in the memorandum of March 19, 1901, it was found, with extreme surprise, that you ascribed to the Government a purpose to consider the question in no other light than that of domestic legislation. When article 20 of the treaty between the Empire and Colombia was cited in the note of May 9 last, it was with no other intention than that of adding supplementary proof to that already adduced in regard to the assent given by Germany to the doctrines upheld by Venezuela.

The three cases now cited as precedents for agreements reached through the diplomatic channel are self-explaining. In 1885 an arrangement was made with France for the payment of allowed claims and the examination of cases dating from much earlier periods. And proof of the fact that the doctrine maintained by Venezuela is therein duly recognized is found in Article V of that convention, whose force has just been fully confirmed. That article inhibits the diplomatic agents of the two contracting parties from intervening in private claims or complaints relating to matters appertaining to civil or criminal justice unless there should be some denial of justice. The agreement of 1898 with Spain appears to be the simple effect of circumstances, similar to those which brought about that which is termed by yourself the agreement of February 6, 1896, between the German minister at Caracas and the ministry of finance of Venezuela. There was nothing in that instrument that was not contained in a list of claims previously classified within the precincts of the competent board, and the agreement solemnly recognized the validity of the executive decree that had regulated the examinations and the mode of payment of the cases of that period. Under head one the agreement reads as follows:

The Government acknowledges, in accordance with the decrees of June 9, 1893, and July 16, 1894, the 229,915.37 bolivars, amount of the claim preferred by German subjects as entered in the list submitted by the imperial legation.

The list there mentioned was that which comprised the cases examined and classified by the board, and the claims to which it relates were paid in the very kind of paper created for the settlement



of debts incurred on account of the revolution of 1892, which had established itself as a government.

The reference to the strict limitation of the period within which the cases presented to the board had to come totally lacks weight, since the general law which establishes the course for the presentation and vindication of any rights against the nation is still in force. As regards the moral and political status of the judges in charge of such cases, it is impossible to admit, except as a mere supposition, apt to vanish of itself, the charge of lack of competence which, in point of impartiality, seems to be made in the text transmitted by the imperial legation. And if we pass from this to the estimate therein made of the value of the fiduciary paper which is intended to satisfy the debts accruing from the cases submitted to the board, we are left to infer as an inadmissible fact, that the German subjects to whom payment was made in 1896 in certificates of the 6 per cent debt for allowed claims growing out of the war of 1892 were of less exacting temper than the present claimants.

As for the action referred to the Congress, which your note describes as frustraneous, the Government holds that it was rather, as it will shortly prove to be, highly consistent with the principles of equity which prompted its introduction. This is proved by the way in which the resolution of the legislative body succeeded in removing in favor of various claimants the legal difficulty that stood in the way of retroactive action.

There is in your statement another point that has drawn the special attention of the Government, because of its affecting nothing less than the seriousness and propriety which it endeavors to impress upon all its acts. It is alleged that the subsequent correspondence was conducted by Venezuela in a quasi-insulting tone, and that the Government finally published the notes exchanged between the ministry and the imperial legation, some of which had been marked as being of a confidential nature. After a thorough examination of the record in the case, it was impossible to find in what passage there is any sentence of insulting significance, since such presumption can not be drawn from the simple statement of a doctrine or from the mere elucidation of a principle of law. The Venezuelan Government would greatly desire to have such passages as may contain the slightest offense to the Empire pointed out to it, in the same way as it has had, in the course of correspondence, occasion to note several remarks somewhat unfriendly to the Republic, and it would hasten to give them their most polite significance.

The insertion in the publication of August of Dr. Schmidt Leda's memorandum of March 8, 1901, which was marked confidential, constitutes an act that can be abundantly explained. The ministry of foreign relations refrained from publishing that document and its

reply even in its annual report to Congress; but when the memorandum of the ambassador in Washington, subsequently known to all the chancellories in the world, took the matter out of its original sphere and made it common property, it was logical that the Republic, mindful of its privileges and responsibilities, should explain to friendly governments the true character of the case, which could not be done without publishing the whole of the correspondence. And it is proper to state that, as you know, a diplomatic note, for being marked confidential, is not supposed to be so held except in relation to the circumstances of temporary duration that require it; else the insertion in publications issued by nearly all the nations of the world of documents which originally partook of that character could not be understood. After the time during which it was expedient to withhold the note, its confidential character is devoid of purpose. No less was the surprise experienced by the Government at the assertion that the memorandum of the 17th of August last was couched in offensive language. Its mere perusal (such at least is the Venezuelan Government's opinion), shows that the document contains nothing but a brief statement of the views disclosed by the German ambassador in Washington, and a rejoinder made on a strictly legal ground and in the moderate tone that belongs to lawful rights.

Having thus offered the most indispensable remarks relative to that part of your note which sets forth certain antecedents, and hoping that this will serve for the desired rectification of the particulars therein mentioned, I now come to the statement of the views and positions of the Venezuelan Government in regard to your final conclusions and to the animus by which you were guided in presenting them on behalf of your superior.

The Imperial Government desires that that of Venezuela will see to it that the claims of German subjects growing out of the civil war be satisfied, and that, in regard to the other private parties or concerns in which they hold interests, the method of ascertaining and guaranteeing those interests in every detail be determined by arbitration. The necessity of a statement to that effect is suggested, and as there can be no wavering on the part of the Federal Government touching matters dealing with engagements secured by stipulations placed under the protection of the law of the Republic, or with duties born of concrete provisions of that legislation, neither the first nor the second proposition contains any condition that is not in accordance with what might be provided for the adjustment of every difference with the Government of Germany. If the claims under discussion are just claims, the Federal Executive, as an honored and civilized power, hastens here and now to give the assurance that those claims will be examined and passed upon as such; and inasmuch as the proper board is already organized, there is no occasion for dilatori-

ness or the slightest departure from the rules laid down by the law in the conduct of the proceedings. In regard to the other particulars, every one of which comes under its regulating law, I need only call attention to the abnormal circumstances created by the war, which are paralyzing any action on the obligations connected therewith. The Government is considering the appointment of a fiscal agent, who, by entering into direct communication with the interested parties, will help in making the satisfaction of those obligations easier and less protracted. It is only hoped that the work of pacification in which the Government is now deeply and earnestly engaged will enable it to reestablish the service of public credit.

The claims growing out of the war that is still desolating and devastating a part of the Republic will share fully in all the rights that are established by the law regulating the matter.

Having thus returned, in an essentially conciliatory and friendly manner a reply to your note, I pass by, under special orders of the Government, that part which relates to the joint action of the Empire and United Kingdom; for a power like Venezuela, which needs not be urged, and much less constrained, to discharge, as far as it is in its power, its lawful obligations, will never, in its intercourse with the other civilized nations, look for anything that will not be in accordance with the principles of mutual respect and with the rules of reciprocal cordiality.

Accept, sir, the renewed profession of my distinguished consideration.

R. LÓPEZ BARAT.

The Honorable VON PILGRIM BALTAZZI,  
*Chargé d'Affaires of the German Empire.*

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VENEZUELA'S "YELLOW BOOK," PAGES 47-67.

SECOND PART—GREAT BRITAIN.

BRITISH LEGATION,  
*Caracas, April 30, 1900.*

MR. MINISTER: Reserving the rights of His Majesty's Government, and of His Majesty's subjects residing in Venezuela, as well as all possible future criticism or objections to the decree which appeared in the Official Gazette of the 23d instant, which decree provides that claims against the Government of Venezuela, referring to the war or to other matters, shall not be investigated, considered nor decided by the magistrates to whom they should be submitted according to laws now in force, until six months after a decree in which the Chief Executive of the nation shall declare the reestablishment of peace, I take note of the declaration made to me by your excellency in our

interview of the 24th of the present month, that this decree is not applicable to claims prior to the date on which it was issued. I should also be glad if your excellency would kindly inform me to whom, in the absence of the ordinary protection conceded in friendly countries to foreigners by the courts of justice, which, as your excellency has repeatedly informed me, is the only possible means of redress, to say nothing of that protection which must be conceded to British subjects by treaty, which the Government of Venezuela now apparently repudiates—to whom must they address their application to obtain this protection during the time in which the magistrates are not authorized by law to grant it.

I should also thank your excellency, if you would kindly inform me which are those matters, besides the claims relating to the war, which the magistrates are not authorized by law to take into consideration during this period.

I avail myself of this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. R. ANDUEZA PALACIO.

No. 604.]

DEPARTMENT OF FOREIGN RELATIONS,  
OFFICE OF FOREIGN PUBLIC LAW,

*Caracas, May 10, 1900.*

SIR: In a communication from your distinguished predecessor, dated the 30th ultimo, received here on the 2d of the present month, and which treats of the decree regarding the filing of claims, it seems to be thought that because in that decree a time is fixed for the receipt, study, and consideration of said claims, the interests, whose validity the judiciary is called upon to decide, remain during all that interval without legal protection. The Chief Executive of the Republic regrets that a measure intended solely to prevent obstacles in the constitutional and harmonious adjustment of all the branches of the service, after the natural disturbances of the war and without injury to any private right, should have given occasion for that supposition. Your excellency knows that the law, as a protecting principle of rights, can never fail to exercise its good efforts, even when it is not possible to apply it simultaneously to all the rights that seek its protection. The fixing of the time in which the necessary proofs of each claim must be received and considered is not equivalent to a suspension of judicial functions until the arrival of said time. The mechanism of the administration continues its daily functions; the decree only treats of delaying, until the complete organization of all the branches of the Government, the consideration of the proceedings relating to alleged damages.

The phrase referring to matters foreign to the war, which your distinguished predecessor also considered as an ambiguous point, is due only to the natural foresight of every legislator, concerning matters which it is impossible to decide when the whole administrative branch is included.

As to the assertion that the honorable Mr. Haggard thought he heard from my lips with respect to the claims to which the decree applies, it is not possible for me to own it, inasmuch as the decree of the executive speaks in a general sense in referring to the circumstances of the war.

I beg to renew to your excellency the assurances of my highest consideration.

R. ANDUEZA PALACIO.

The Hon. ARTHUR CUNNINGHAM GRANT DUFF,  
*Chargé d'Affaires.*

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BRITISH LEGATION,  
*Caracas, April 25, 1901.*

MR. MINISTER: I have the honor to inform your excellency that the decree of January 24 of the past year, which creates a "commission for the examination and classification of credits," has received the careful consideration of His Majesty's Government in so far as it affects the claims of British subjects arising out of the last civil disturbances which have taken place in this country.

I now have the honor to inform your excellency that I have received instructions which cause me to entertain the hope that the method of adjusting the pending British claims, proposed in the decree mentioned, may give satisfactory results. At the same time I have the honor to report to your excellency that the declaration communicated to the Government of Venezuela by Mr. Middleton, His Majesty's resident minister, in his communication of May 21, 1873, to the effect that His Majesty's Government reserves the right to object to any claim on the part of Venezuela at any future time to having released itself, by its own decree, from responsibility to Great Britain as to the injustice or damages caused to British subjects, for which Venezuela would be bound to give indemnization either by reason of the law of nations in general or by virtue of the provisions of treaties.

It is my duty, furthermore, to point out to your excellency that the limit of ninety days within which the claim should be presented, according to article 3 of the decree, is too short a period, considering the great extent of the Republic and the deficient means of communication, and to request, under such circumstances, that an extension of

time be granted in those cases in which such a concession is justly requested.

I avail myself of this opportunity to renew to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. EDUARDO BLANCO,  
*Minister of Foreign Relations.*

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No. 577.]

DEPARTMENT OF FOREIGN RELATIONS,  
OFFICE OF PUBLIC LAW,  
*Caracas, May 11, 1901.*

MR. MINISTER: In your communication of the 25th ultimo, received by me on the afternoon of the 27th, your excellency announces that the decree of January 24, concerning the study and classification of claims arising out of the war which terminated in 1900, has been considered by Your Majesty's Government under the impression or with the hope that it would give the claims alleged by British subjects satisfactory results. As the executive decree in question was issued in strict accordance with the principles of justice, its effects can not fail to conform or be in harmony with the true nature of the rights that may be claimed. Therefore the view of His Majesty's Government in that particular is founded upon logical reasons.

The President, to whom I informed the entire contents of your excellency's communication, regrets not to be able to agree with you as to the opinion that your excellency expresses with respect to the reservations that one of your distinguished predecessors claims to have formulated on May 21, 1873, as to any pretense on the part of the Republic that may release it from all responsibility from injustice done or damages caused to British subjects.

The communication of the honorable Mr. Middleton, to which your excellency refers, did not express the slightest charge of a concrete character against the law of February 14, 1873, the object of which was to establish the manner of making claims against the nation. That distinguished British representative confined himself in the communication to an enunciation of said view in the same words, or in the same vague form that your excellency now adopts; and inasmuch as Mr. Jacinto Gutierrez, in his answer of September 6 of that year, stated that a claim expressed in such broad and indefinite terms regarding laws passed by the proper national powers, without violating any public treaty or any principle of international law, was uncalled for, and could not, therefore, produce any effect at the time, I have, in turn, to confirm said opinion or express it anew, as a suitable answer to your excellency, and in accordance with the



instructions of the President of the Republic. On the other hand, the chief justice believes that no reservation of rights whatever concerning decrees issued in the name of the national sovereignty and the effects of which include both natives and foreigners, is possible or acceptable. There is no principle of the law of nations, nor any assumption whatever in the stipulation which Venezuela should bear in mind concerning Great Britain, which binds the Government to establish discriminations in the protection of the interests which should be governed by internal legislation.

With regard to the period fixed for the filing of the claims arising out of the war of 1899 and 1900, a period which your excellency considered too short, I would respectfully remind you that article 3 of the decree of January 24 foresaw the unavoidable circumstances to which your excellency refers, and therefore acted before the legal remedy of its effects. Hence, the interested party is he who is bound to prove whether he is included in the aforesaid case.

I beg your excellency to accept the renewed assurances of my highest consideration.

EDUARDO BLANCO.

His Excellency WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His Britannic Majesty.*

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BRITISH LEGATION,  
*Caracas, May 13, 1901.*

MR. MINISTER: I have the honor to acknowledge receipt of the communication of your excellency of the 11th instant relating to the decree concerning claims arising out of the civil war of 1899 to 1900, in so far as said decree affects the rights of British subjects.

In my communication of the 25th of last month I stated that His Majesty's Government, in entertaining the hope that the method proposed in the decree in question for settling the pending claims of British subjects might give satisfactory results, reserved to itself the right to "object to any pretense of the Republic of Venezuela at any future time of having released itself by virtue of its own decree of any responsibility to Great Britain with regard to any injustice done or damages caused to British subjects for which Venezuela would be bound to give indemnization, either by virtue of the law of nations in general or by virtue of the provisions of treaties."

To this your excellency replies that the aforesaid right to object, which the Marquis of Lansdowne reserves to himself, "is uncalled for and has no relation whatever with the question," because "the temporary President does not consider that any kind of reservation of rights that may affect decrees issued in the name of the national sovereignty, the effects of which are applicable both to natives and foreigners, to be possible or acceptable."

Your excellency also states that "there is no principle of international law, nor is there in the stipulations between Great Britain and Venezuela anything whatever that binds the Government to establish any discrimination in the protection of the interests which internal legislation is called upon to exercise." In the first part of this statement the Venezuelan Government would appear to be in direct opposition to that of His Majesty's, in setting forth that the reservation of right which I have had the honor to make in the name of the Government, is uncalled for, and has no relation whatever to the question, as presumably His Majesty's Government would not have arrived at such a decision, had it considered it inopportune. The second part would appear so clearly in contradiction to the terms of the second paragraph of the ninth clause of the treaty of 1825, which says: "That British subjects shall be exempt from all forced loans, military levies, or requisitions," thereby holding the Executive Government to that of His Majesty's in this respect, a responsibility which does not exist in the case of other nations.

This constitutes a marked difference which it would have been deemed impossible to deny and which it is impossible to avoid. His Majesty's Government has never admitted, therefore, the contention of the Venezuelan Government, which is of long standing, that the claims of British subjects should be placed on the same footing as those of natives, submitting them to judicial intervention and decision to the exclusion of diplomatic intervention.

Under such circumstances it would seem that nothing is gained by my continuing the discussion, and without any loss of time I submit the views of your excellency to the consideration of His Majesty's Government.

I avail myself of this opportunity to renew to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. EDUARDO BLANCO,  
*Minister of Foreign Relations of the  
United States of Venezuela.*

No. 635.]

DEPARTMENT OF FOREIGN RELATIONS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, May 25, 1901.*

MR. MINISTER: On referring, in your note of the 13th of the present month, to the claims that some British subjects residing in Venezuela may have for damages arising out of the last war, your excellency disregards that which you had declared in your former communication concerning the vague reservations of rights formulated by one of your predecessors in 1873, and endeavors to establish only a

certain counterview in the instructions which you say you have now received, and the answer which Mr. Jacinto Gutiérrez, in his capacity as minister of foreign relations, then made to Mr. Middleton, of which your excellency only treats as a new or transitory matter. With all the respect due to the opinion of that honorable legation, and in spite of the interest which the Venezuelan Government has in agreeing with your excellency as to the matter of settling the rights of His Majesty's subjects residing in the Republic, I must advise you of my most decided dissent with respect to the application of such an interpretation of the matter under discussion, since it is not possible to forget what was then declared by Venezuela, nor to overlook the time transpired, which amounts already to about three decades, in which the principle of judicial equality established in the law of 1873 regarding claims against the nation has acquired, if that were possible, greater strength. I find it necessary to express here a similar or analogous nonconformity in regard to the condition which, with respect to British interests, your excellency seems to deduce from the treaty of 1825-1834. But as said opinion affects a point of easy explanation a slight examination of its circumstances by way of defining it, and to leave the desired agreement already established, may perhaps be sufficient.

It is a maxim of the law that neither governments or individuals can grant that which does not belong to them, or which for any reason is beyond their natural authority and control. Therefore, no government has power to jeopardize the subsequent life of the country in whose name it contracts, nor to alienate that which constitutes the essential basis of the political existence of the state that it represents. The rights which form that essential basis are those of autonomy, independence, free development, equal rights, jurisdiction and dominion, and representation, none of which can be renounced without impairing or falsifying the foundation of national existence. From these premises high authorities like Fiore hold (art. 696) as unlawful matter in treaties "that which involves a direct violation of the constitutional law of any of the contracting states;" and, hence, noted expounders like Hautefeuille (*Disc. Prél. XIII*) declare that a treaty comprising "the cession or gratuitous abandonment of an essential or natural right can not be considered binding."

The doctrine of authors on this subject corresponds in that respect not only to political conveniences but also to the law of necessity. In order that an agreement between two nations may afford permanent features, it must be in reasonable conformity with the internal condition of each of the states that celebrate it. It could not be conceived, for example, how an essentially industrial or manufacturing nation could treat with another upon the basis of a restriction in the exportation of its products, even though conditions imposed by

fortuitous circumstances should intervene. Neither would it be possible to understand how a monarchy could enter into an alliance against the political principle on which it is founded, nor how a republic would subscribe to obligations contrary to its democratic spirit. And since the states are moral entities of continuous life, and, to a certain extent, perpetual, their duties must always conform to the progressive condition that gives them existence in the concert of nations.

The treaty of 1825-1834, which your excellency cites, is a law, as is every treaty, and could hardly be in open contradiction to the substantive law of the Republic. As far as possible, considering its antiquity, that agreement had to take into account in its clauses the natural change of certain conditions in the civil and administrative life of the two contracting parties, as is proved by the circumstances of mentioning therein (art. 6) export duties, afterwards abolished in Venezuela, and that of the two governments binding themselves (art. 13) to prohibit their respective subjects from engaging in the slave trade, a trade the existence of which no one at the present day would even think of.

The equality of procedure, so far as interests and other particulars are concerned, is therein not only foreseen but is also formally established for all time by the two nations, inasmuch as article 9 of said treaty, the same precisely which your excellency quotes, says that in everything relating to the administration of justice the citizens who are subjects of the two contracting parties shall enjoy in their respective territories and dominions the same privileges, liberties, and rights as the citizens of the most favored nation. Nothing else is aimed at but the administration of justice when a high court takes cognizance of the claims against the nation for alleged injuries which are attributed to the action of the authorities in time of war; and although Venezuela has not up to the present time established with any country any judicial procedure that presupposes privileges, advantages, or preeminence over the natives of the country, it is inferred from this that the application of the law of 1873 to the claims of British subjects, far from being in contradiction with the provisions of article 9, is in conformity with it in a conclusive and unequivocal manner.

The equality of the procedure in civil cases for natives and foreigners, a principle contained in the law of 1873 and which is included in Venezuelan constitutional law, is based on a maxim universally recognized, namely, the obligation of him who goes to a foreign country to submit to the laws of the same. The ancient aphorism *locus regit actum*, the essential foundation of the administrative

unity in every system of government, would be contradictory and inefficient if the existence of two laws were possible, one to protect aliens and the other to govern the interests of natives. This view of necessary equality was that which decided the enactment of the British law of May 12, 1870, by which (art. 2) an alien can acquire or possess property in the United Kingdom, either real or personal, in the same manner and in all respects as British subjects by birth; and that view was the inspirer of the categorical declaration which was signed on April 18, 1890, at the Pan-American Conference in Washington by 15 of the 17 nations officially represented therein. The zeal shown by the American republics in guarding that principle seems to be such that there is scarcely one of them that has not adopted it, either in this or in some other form, in its constitution. The United States of America gave it explicit recognition in 1868 in the fourteenth amendment of its Constitution.

The United States of Mexico proclaimed it in article 33 of its federal constitution. Guatemala, Salvador, Nicaragua, and Honduras made it the object of very explicit articles in their present constitutions. Colombia, on adopting it, included it in its political code of 1886, even more as a right than as a duty, since it at once determined the obligation of natives and foreigners to live subject to the national legislation of the country. The United States of Brazil in the constitution of 1891 assured equally to natives and foreigners the inviolability of civil rights. Ecuador went so far as to subordinate to the acknowledgement of domestic laws the admission of foreigners to the Republic; and Peru made coessential the power of acquiring property in its territory and the fact of being subject to the duties that, with regard to said property, applied to Peruvians. The Argentine Republic established the absolute equality of rights in its constitution of 1860, and Paraguay did likewise, maintaining in its constitution the same principle that, as is observed, is the only one capable of insuring governmental rule, especially in nations called upon, as these are, to see their elements of life increased through immigration. And it should be borne in mind that such equality is justly looked upon as a means of attracting foreign subjects to the enjoyment of the national life and as a proof of the complete derogation or forgetfulness of the strange views of other times, which tended to consider every foreigner as an object of concealed suspicion or comparative distrust, and not like the friend that used to arrive, as he now comes to all countries, confident of a cordial reception as well as respect and affection.

Furthermore, the object of the law of 1873 was to prevent the difficulties of various kinds, occasioned by the manner in which private persons filed their claims, oftentimes without a solid foundation, or

complaints without adequate cause. The court designated to define the rights upon which the respective claims are based, is the highest in the Republic, and the very fact of thus avoiding procedure or the appealing of cases by the interested parties from lower to higher courts, shows that the legislator sought therein to facilitate the means of explaining each claim without any prejudice to other national laws.

To question now, after the expiration of almost thirty years the right with which Venezuela enacted that law, would be equivalent to doubt the efficiency and validity of all the principles on which the sovereignty of nations rests. In the exercise of its powers and by virtue of its privileges as a free and independent State, it legislated at that time without it being possible for it to establish the least difference, whether the claimants were natives or foreigners, regarding the manner of administering the laws relating to the matter. The general laws of the Republic can be but the same for all. Public law so establishes; the national constitution so determines; the civil code so provides in one of its first articles, and so must it always be considered without going so far as to oppose the clause of the treaty that your excellency quotes, inasmuch as it does not contradict it, nor could it ever be in opposition to the administrative standard which independent states always consult in all their agreements. The conditions or duties established by a public treaty like that of 1825-1834, constitute a part of the national law itself, and it is for the magistrates, to whom the occasion is presented of administering justice in the name of the Republic, in that respect to take cognizance of them in order to give them the proper application in conformity with the true judicial sense.

I present here these suggestions, impelled by a friendly and cordial desire of impressing on your excellency's mind the sincere statement of the reasons that the Government has for not accepting any reservation of right whatever of those indicated by that honorable legation by virtue of the claims of British subjects for alleged damages during the period of the war.

It is not the purpose of the department, as it is not that of your excellency, to continue the discussion concerning that point, which Venezuela finds, moreover, very clear, from the point of view of reason and right.

I beg your excellency to accept the renewed assurances of my highest and most distinguished consideration.

EDUARDO BLANCO.

His Excellency WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His Britannic Majesty.*



BRITISH LEGATION,

*Caracas, June 8, 1901.*

MR. MINISTER: I have the honor to acknowledge receipt of your excellency's communication of the 25th ultimo, relating to the treatment by the Venezuelan Government of foreign claims.

I avail myself of this opportunity to renew to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. EDUARDO BLANCO,

*Minister of Foreign Relations of the United States of Venezuela.*

BRITISH LEGATION,

*Caracas, December 25, 1901.*

MR. MINISTER: His Majesty's Government has learned with regret, from the communications of Doctor Blanco of the 11th and 25th of May, that the Government of Venezuela refuses to recognize the reservations of rights made by His Majesty's Government in the question of British claims in the last and previous communications, concerning the right to object to any claim on the part of the Venezuelan Government at any time of releasing itself, by its own decree, of responsibility with Great Britain with respect to damages or injuries caused to British subjects by which Venezuela would be bound to make indemnization, either in accordance with international law in general or in conformity with treaty obligations. These reservations include also the refusal of His Majesty's Government to recognize any limitation whatever by the national law of its right, in accordance with the general principles of international law.

His Majesty's Government has refused more than once to admit that even a clause contained in a contract that excludes recourse to diplomatic intervention has any force whatever as an exception to the action of His Majesty's Government, should the latter deem it convenient to exercise such right.

This attitude has been adopted by His Majesty's Government, not with special reference to the questions that are now being discussed with Venezuela, but as general principles and after mature consideration. This has been maintained on several occasions, and to this end communications have been addressed to a number of the South American Republics.

The answers of Doctor Blanco to my representations have received due attention; but His Majesty's Government has not been able to find in the arguments advanced anything that may induce it to modify the opinion that it has already expressed, and it is my duty to advise the Venezuelan Government that His Majesty must maintain his reservations.

I avail myself of this opportunity to renew to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO.

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No. 14.]

DEPARTMENT OF FOREIGN RELATIONS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, January 4, 1902.*

MR. MINISTER: In your communication of December 25 last, on referring to the motives of essential legal nature set forth by Venezuela to oppose the reservations of right of Great Britain, which your excellency quoted on April 25 last, relative to the legislation of the Republic in matters of claims, your excellency states, as the principle or only reason for same, that His Majesty's Government has refused more than once even to recognize the validity of the clauses of a contract contrary to diplomatic intervention, should said Government deem it convenient to take any action in that direction; and adds that, in the same sense, communications have been directed to several of the South American Republics.

Such a declaration, which is sufficient by itself to define the view in which Great Britain holds the acts emanating from its own will or from its national convenience, tends, in a certain manner, to strengthen the idea of sovereignty which Venezuela maintained from the beginning for insuring the validity of the law of 1873; unless Your Majesty's Government thinks possible to establish a doctrine of international law solely for application to the South American Republics, which would naturally give rise to the question, Why not assume the same attitude in your relations with the Republics of North America and the countries of the European continent?

The Republic of Venezuela does not wish its legislation to have any supremacy over that of any other country, but to be governed by its legislation alone and maintain and comply that which is provided for by the said legislation with respect to all the interests permanently existing in its territory, whether natives or foreigners are concerned. So that, even though your excellency says, in the latter part of your communication, that His Majesty's Government maintains in that respect its prior reservations of rights because of not having found in Doctor Blanco's answers anything that induces it to modify its opinion, this department, in accordance with instructions received from the President of the Republic, has to reiterate, as it does reiterate, its former view in the matter, not without respectfully calling attention to the fact of your not having, up to the present time, replied to a single one of the arguments upon which Venezuela relies for opposing the reservations aforesaid.

I take this opportunity of renewing to your excellency the assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His Britannic Majesty.*

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BRITISH LEGATION,  
*Caracas, January 12, 1902.*

MR. MINISTER: I have the honor to acknowledge receipt of your excellency's communication of the 4th instant, concerning the reservations made by the Government of His Britanic Majesty denying to recognize the claim advanced by Venezuela of being able, by its own decree, to release itself of liability with Great Britain as to damages or injuries to British subjects, for which Venezuela would be bound to make indemnization, either in accordance with the principles of the law of nations or by virtue of formal agreements, and refusing to acknowledge any limitation by the national law of Venezuela of the rights of Great Britain according to the general principles of international law.

I shall not fail to communicate to His Majesty's Government this answer concerning said reservations.

Inasmuch as the reservations of His Majesty's Government are now duly and formally recorded no good result would seem to be attained by any answer from this legation to your excellency's communication. I shall confine myself, therefore, to the final statement contained in your communication that not one of the arguments upon which Venezuela bases its claim of procedure with Great Britain in a manner contrary to treaty and to the law of nations has been answered.

I am inclined to think that, on second thought, your excellency will agree with His Majesty's legation that allegations or arguments in support of a claim so unusual need no reply.

I take this opportunity to renew to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO.

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No. 113.]

DEPARTMENT OF FOREIGN RELATIONS,  
OFFICE OF PUBLIC FOREIGN LAW,  
*Caracas, January 25, 1903.*

MR. MINISTER: In your communication of the 12th instant your excellency referred to mine of the 4th and to previous communications from this department relating to the general subject of claims in

such a manner that one might be led to believe in the existence of some Venezuelan law opposed to public treaties and to international law. All of the correspondence maintained on account of the reservations that that legation transmitted tends exactly on the part of this department to prove or to demonstrate in that sense the conformity of previous legislation—token of national sovereignty—with the most substantial principles of the law of nations and with the respective stipulations of the treaty of 1825–1834, and hence I fail to conceive how you should have thought, unless through an involuntary error of interpretation, that on my referring to arguments unrefuted up to the present time I could allude to circumstances contrary to any public treaty or to claims opposed to the dictum of international law.

If your excellency would be kind enough to read anew the communications of my predecessor, and especially the one of May 25 last, you would undoubtedly find that the arguments therein contained are not of an inadmissible character, but precedents taken from the clearest doctrine of the law of nations and true and concrete conclusions arising out of the text itself of the treaty with Great Britain. What my predecessor then did was to establish the relation, logical and true, between the law of 1873 and the treaty of 1825–1834, in order to enter into other pertinent considerations not inspired by any whimsical or uncertain opinion, but of that which warrants, defines, explains, and interprets the principles of law followed by all civilized nations.

It is not to be assumed that your excellency—in whom the greatest zeal is always observed as to matters placed in your charge—on saying, with respect to the allegations and arguments quoted, that they “need no answer on account of being advanced in support of unusual claims,” should have wished to simply put aside all attempt at refutation, since in fact, in you should think those arguments wholly inconsistent with public law, their complete refutation would be much easier for you. And inasmuch as in the communication of December 25 last your excellency informed this department that said arguments had received the due attention of His Majesty’s Government, it rather seems that at the beginning another character and importance was imputed to them. Whatever is worth attention is worth an answer, if all is not taken for granted even when we do not assent entirely to what has been taken into consideration. The Government of Venezuela on its part continues to consider good those arguments and as unanswerable those allegations, and trusts that Your Majesty’s Government, as well as your excellency, may acknowledge that it is not possible to consider in any other manner a point so clear and of such a definite nature.

I beg your excellency to accept the renewed assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His Britannic Majesty.*

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BRITISH LEGATION,  
*Caracas, January 31, 1902.*

MR. MINISTER: I have the honor to acknowledge receipt of your excellency's communication of the 25th instant, relating to the denial of His Majesty's Government to admit the claim advanced by Venezuela of being able to free itself, by its own decree, of liability to Great Britain concerning damages or injuries to British subjects, for which Venezuela would be bound to make indemnization according to international law or by virtue of treaty agreements, as well as to acknowledge any limitation whatever by the national Venezuelan law of the rights of Great Britain in accordance with the general principles of international law. I have read with interest and attention your excellency's communication, but as it does not seem to throw new light upon the question, it is my duty to request you to be good enough to excuse me from entering further into the subject, and to add anything to the remarks contained in my communications of the 4th instant and the 25th ultimo.

I take this opportunity of renewing to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO.

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No. 192.]

DEPARTMENT OF FOREIGN RELATIONS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, February 6, 1902.*

MR. MINISTER: Your excellency, in your courteous communication of January 31, in answer to the communication that I had the honor to address to you on the 25th, in consequence of the opinion expressed by you concerning Venezuelan legislation on the general subject of claims, says, in referring to same, that said communication offers no new light in the matter and beg to be excused from entering into a discussion concerning the contents thereof. But since, in said answer I made reference mainly to the presentation of formal arguments, and especially to those advanced by my predecessor in the communication of the 25th of May of the past year, none of which have been refuted, I must consider in all their force and vigor the doctrines of

law and the practical examples argued in opposition to the reservations of Great Britain that your excellency undertook to forward on April 25 of the same year, 1901.

I beg your excellency to accept the renewed assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His Britannic Majesty.*

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BRITISH LEGATION,  
*Caracas, February 8, 1902.*

MR. MINISTER: I have the honor to acknowledge receipt of your excellency's communication of the 6th instant, relating to the denial of His Majesty's Government to admit the claim advanced by Venezuela of being able to free itself, by its own decree, from liability to Great Britain respecting damages or injuries to British subjects that Venezuela would be bound to indemnify, either in accordance with the law of nations or by virtue of formal agreements, as well as to recognize any limitation whatever by the national Venezuelan laws of the rights of Great Britain in accordance with the general principles of international law.

I avail myself of this opportunity of renewing to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO.

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No. 213.]

DEPARTMENT OF FOREIGN RELATIONS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, February 14, 1902.*

MR. MINISTER: I have the honor to inform your excellency of the receipt in this office of your communication of the 8th, in which your excellency confines himself to a restatement concerning the subject of general claims, which is but a paragraph of previous communications already answered by this department.

I beg to renew to your excellency the assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His Britannic Majesty.*



BRITISH LEGATION,  
Caracas, February 20, 1902.

MR. MINISTER: I have the honor to transmit to your excellency with this communication, by instructions of His Majesty's Government, some claims of British subjects against the Government of Venezuela for damages and losses suffered by them at the hands of the authorities and of Venezuelan soldiers.

At the same time I am directed to demand for British claims the same treatment accorded to those of German subjects.

At the bottom you will find a list of the names of the claimants and the amount of each claim, and I have also the honor to include a separate list which accompanies the claims.

I avail myself of this opportunity to renew to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency J. R. PACHANO.

| Claimant.                      | Residence.               | Amount of claims. |
|--------------------------------|--------------------------|-------------------|
|                                |                          | <i>Bolivars.</i>  |
| Augusto B. Heude .....         | Guiria .....             | 10,000            |
| Jose Natalio John .....        | Naguata .....            | 8,500             |
| John Philip Dill Mahomed ..... | Guiria .....             | 8,582             |
| James E. Crossman .....        | Pueblo Nuevo, Aroa ..... | 2,500             |
| Rosa Daly .....                | Guiria .....             | 1,651             |
| Charles William .....          | do .....                 | 6,606             |
| Abdool Currim .....            | do .....                 | 8,500             |

BRITISH LEGATION,  
CARACAS, November 11, 1902.

MR. MINISTER: I am directed by His Majesty's Government to inform the Republic of Venezuela that he regrets the unsatisfactory character of the answer to his representations contained in my communications to your excellency of the 30th of July last.\* He can not admit that the serious causes of complaint advanced should be answered with a denial to discuss the same.

If such a denial is insisted upon, it will be the duty of His Majesty's Government to consider what measures it must adopt for the protection of British interests.

Nevertheless, he does not wish to exclude at once all possibility of continuing negotiations, and is therefore disposed to consider any subsequent communication that the Government of the Republic of Venezuela may be disposed to present.

\* See this communication in the part of the appendix concerning the complaints filed by Venezuela on account of the revolutionary ship *Ban Rich*. The other communications quoted in the answer are found in the same appendix.

I avail myself of this opportunity to renew to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency RAFAEL LÓPEZ BARALT,

*Minister of Foreign Relations of the United States of Venezuela.*

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VENEZUELA'S "YELLOW BOOK," PAGES 68-77.

No. 1324.]

DEPARTMENT OF FOREIGN AFFAIRS,

OFFICE OF FOREIGN PUBLIC LAWS,

*Caracas, November 14, 1902.*

SIR: From the note of your excellency of the 11th instant, the Government of the Republic might conclude, not without great sorrow, that the Government of His Britannic Majesty has not yet carefully considered the series of complaints and observations presented to the British legation on account of the acts committed by the *Ban Righ*, from the time of her departure from English ports and of the attitude taken by the authorities of Trinidad, from the beginning of the revolution excited within the territory of said colony and which has just devastated Venezuela so seriously. If those charges had been examined, and they were thoroughly summarized up to the 5th of April in note No. 450, and to which, among others, there has just been added that of the dispatch of numerous sacks of mail to Ciudad Bolivar, a place controlled by a sedition against the legal power of the Republic, the Government of His Majesty would not have attributed to the mere will of Venezuela the proposition of the other questions, and would see on the contrary the logical result of a condition very foreign indeed to all that the Federal Executive could have presumed in the course of its amicable relations with the kingdom of Great Britain.

When matters are considered seriously and impartially it will be seen, on the one hand, that the effort of the Government of His Majesty, or of the legation in Caracas, to discuss questions relatively of secondary importance, many of which may be considered as having been investigated and decided; and on the other, the just, natural, and indispensable interest of Venezuela in seeing her rights cared for and respected in view of the serious losses caused thereto by a vessel sailing from English waters, provided with British papers, and on account of the evident facilities encountered in the adjacent colony, both within and without the vessel, for the consummation of her plans inflicted all the losses suffered by the Republic from the month of January to the present time. The situation, therefore, mentioned in the note of your excellency can not be imputed to the Government of Venezuela, even by an indirect act of her will.

The effects of that situation corresponds to a condition of things with which the Government of His Majesty itself is intimately connected. The said Government can not comprehensively and much less acceptably consider that another government, acting under the inspiration of its rights and duty, submits to circumstances which it did not create or to necessities which it has not established. In this particular Venezuela does nothing capable of being considered a violation of any formula of courtesy or any principle of law. Her conduct is in entire harmony with the judicial status of the question, and for her nothing would be more satisfactory, in view of her strong relations of friendship with Great Britain, than to receive from the Government of the Kingdom some demonstration looking to the establishment of a mutual understanding in order to satisfy the lossess caused by the steamer *Ban Righ*, and by the consequent conduct of the authorities of Trinidad. Until the present she can see nothing but the most unjust refusal on the part of Great Britain to discuss the subject; a declination aggravated by the fact so recent as that of your excellency not having even replied to the note addressed to you October 27 relative to the illegal dispatch of a heavy mail from Trinidad for places like the Ciudad Bolivar occupied by insurgents.

There has been given much thought here relative to the serious accidents, as the inevitable result of the acts of the *Ban Righ*, since last January and by the attitude assumed by the authorities of the adjacent colony which caused loss to Venezuela. The Executive asks nothing of Great Britain which does not legitimately arise from the nature of the question; and therefore appeals to the spirit of justice and rectitude of the Government of His Majesty in order to place the matter upon the plane of mutual agreement, as the only means of changing the abnormal condition referred to in the note of your excellency, and which the Government of the Republic is the first to lament most seriously.

Accept, your excellency, the renewed assurances of my highest and most distinguished consideration.

R. LÓPEZ BARALT.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,  
*Minister Resident of His Britannic Majesty.*

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[Translation.]

BRITISH LEGATION,  
*Caracas, November 19, 1902.*

SIR: I have the honor to acknowledge the receipt of your note of the 14th instant relative to the complaints of the Government of His Majesty against Venezuela, and to advise you that without loss of

time I transmitted said communication to the Government of His Majesty.

I take this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. RAFAEL LÓPEZ BARALT,  
*Secretary of Foreign Relations*  
*of the United States of Venezuela.*

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BRITISH LEGATION,  
*Caracas, December 7, 1902.*

SIR: In reply to the note of your excellency of the 14th instant, I have the honor to inform you that I have received instructions from the Government of His Majesty to point out to the Venezuelan Government, in writing, that with respect to the steamer *Ban Righ*, the Government of His Majesty has given full explanations, and has shown that in this regard there is no legitimate ground for complaint, nor does the Government of His Majesty consider that there is any justification in attributing blame to the authorities of Trinidad, who only acted according to instructions.

I have the honor to state also that the Government of His Majesty also laments the condition that has arisen, but that it can not accept the note of your excellency as a sufficient reply to my communications, nor as indicative of the intention on the part of the Government of Venezuela to satisfy the claims that the Government of His Majesty has advanced, and that it should be understood that they include all the well-founded claims that have arisen as a consequence of the last civil war and of the prior civil wars, and from the mistreatment or unjust imprisonment of British subjects, and also an arrangement of the foreign debt.

It devolves upon me to request the Venezuelan Government to make a declaration that it recognizes in principle the justice of these claims; that it will immediately pay compensation in the marine cases and in the cases above mentioned, and in those in which British subjects have been unjustly imprisoned or mistreated, and that with respect to the other claims it will consent to accept the decisions of a mixed commission with respect to the amount and the guaranty which must be given for their payment.

It is my duty also to express the hope that the Venezuelan Government will reply to these demands and not oblige the Government of His Majesty to take measures in order to obtain satisfaction.

I should add that the Government of His Majesty has been informed of the claims of the Government of Germany against Venezuela; that the two Governments have agreed to work together for

the purpose of securing the settlement of all their claims, and that the Government of His Majesty will demand the immediate payment of a sum equal to that which in the first place may be paid to the German Government. Whatever balance there may be after the payment of the urgent claims shall be held for the liquidation of the claims which shall be passed upon by the commission.

I also have instructions from the Government of His Majesty to state clearly that this communication should be considered in the light of an ultimatum.

I embrace this opportunity in order to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. R. LOPEZ BARALT,  
*Secretary of Foreign Relations  
of the United States of Venezuela.*

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No. 1435 bis.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAWS,  
*Caracas, December 9, 1902.*

SIR: On Sunday, the 7th of the present month, a person whom I have not the honor to know officially, called at my private residence in order to deliver to me, in the name of your excellency, the note bearing that same date, relative to claims of British subjects, which have been advanced on account of the last and former civil wars.

A sentiment of extreme courtesy on my part induced me to receive the note under those circumstances on that day.

This department has had a voluminous correspondence with the legation of His Majesty on account of the complaints, which Venezuela had in due time presented to the Government of Great Britain, in view of the losses caused by the *Ban Righ* and by the partial conduct of the authorities of Trinidad relative to the revolution which has just devastated the Republic. Your excellency begins by referring to one of my notes, said to be of the 14th of the present month, and which no doubt is that of the 14th of the month last past. With reference thereto, your excellency states that the Government of His Majesty has found no ground for the demands of Venezuela, as the acts of the *Ban Righ* (it is added) were fully explained, and the authorities of Trinidad did not act in other respects, except in obedience to instructions. Your excellency then enters immediately upon the subject of British claims, and requests in the name of your Government that the Government of Venezuela declare the justice thereof, after which you speak of the necessity of their payment and of the joint action agreed upon between the United

Kingdom and the German Empire in order to compel the Republic to make payment.

The Government has considered that note with the care which its contents demand, without having found, in the relation of the antecedents cited, anything which justifies the present attitude or any motive which explains the omission of that reciprocal understanding that would avoid and foresee difficulties. The Government of the Republic begins by calling attention to the fact that the note of December 14, which is the one without doubt to which your excellency refers, had for its essential object to secure an immediate agreement with Great Britain relative to pending questions; and, therefore, it is with surprise that there is noted the evasion or apparent omission by Great Britain of the cordial and friendly views which were so recently set forth. With reference to the *Ban Righ*, no action has been taken tending to remedy the tremendous damages which she caused the Republic; and with respect to the conduct observed by the authorities of Trinidad, far from having offered any reparation, it appears now that they obeyed the express instructions of the British Government. This circumstance needs no explanation, for this alone is sufficient to fully justify all the demands that Venezuela has set forth in the correspondence carried on with the legation until the 14th of last November.

Ignoring the above, the essential part of the note of your excellency, or its real object, can not be other, according to the text itself, than the security of the interests of British subjects. There is found full assurance of such security without the Government departing, as it can not depart, from its administrative functions, in order to harmonize the actual state of affairs with the desire expressed in the name of Great Britain. There could be no difficulty in the Federal Executive recognizing the justice of obligations that are recognized in the national laws, and in that sense there can be full assurance that the interests in question will always be protected and properly cared for.

As to claims, your excellency refers specifically to those enumerated in the note of February 20 last past, and which, in your judgment, amount to 36,401 bolivars, and the claims commission, created by a resolution of the national legislative body, will examine and pass upon them according to justice. The other subjects of the correspondence not replied to relate to that which may become claims, of facts that are about to be investigated or defined, and to which competent authority is giving or will give attention. And as your excellency speaks of well-founded claims it does not seem possible that such questions in their present condition or legal status can present the same aspect as those described in expedientes which set forth their character and form a basis for the order or decree of the proper court or body. The Government can find nothing more in the present request of Great



Britain, although it has carefully studied and investigated the same, for the so-called foreign debt—which the note incidentally mentions—ought not to be and never has been a matter of discussion foreign to the national law of the public debt, in which it appears with all its legal guaranties.

The war which for the past year has devastated Venezuela has left the public treasury almost exhausted, and it has been impossible for the administration to attend for the moment to the serious necessities of the national debt.

Until the work of pacification, almost accomplished, is completed, the difficulty will continue. When peace is declared, which will be soon, it will be unnecessary to remind the Government of the Republic of its fiscal obligations, as it as well knows its duty in this regard, without the necessity of compulsion or stimulus, as your excellency knows the laws of mutual respect and of sound friendship.

Accept, your excellency, the renewed assurances of my highest and most distinguished consideration.

R. LÓPEZ BARALT.

His Excellency WILLIAM HENRY DOVETON HAGGARD,  
*Minister Resident of His Britannic Majesty.*

Note relative to the joint action of Germany and Great Britain and protocols signed in Washington by the representatives of said nations.

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No. 1468.]

UNITED STATES OF VENEZUELA,  
DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAWS,  
*Caracas, December 17, 1902.*

SIR: Ever since the Government of the Republic first explained to the legations of Great Britain and Germany its explicit opinion as to how titles or the rights of their subjects should be discussed in matters affecting national liability, it was very careful to conform its opinion to the clearest principle of domestic sovereignty as well as to the sound precepts of international law. Under the action of this twofold legal power it endeavored to avoid unfortunate differences with those European States; and with the assurance of not having failed in any mutual agreement, but rather omitting to cover up any violation of the interests of the natives of the United Kingdom or of the Empire, it demonstrated in its correspondence with the respective legations the material impossibility, by law, of establishing for English and German subjects, as compared with the natives of the country, any difference as regards civil actions, as is evident would be the case to allow in some instances their persons and property to be exempt from the effects of domestic law in order that they might place themselves under the protection of a power foreign to the terri-

tory where said subjects exercise with advantage their ability and faculties.

On that line there was presented to the Imperial legation proofs and arguments taken from German legislation and to the British legation there was set forth the exact equality which exists between the stipulations of her treaty with Venezuela (1825-1834), and that absolutely required by Venezuelan legislation in order to define any alleged right and to secure the-same. In order to consider as just the pretensions of those two Governments with regard to their subjects, they could not fail to see the adequate guaranty of their interests, and it may be that this gave rise to the desire, and more than the desire, the extreme effort to make Venezuela accept as the only estimate the official value of other nations with respect to the nature, the origin, the legitimacy, and amount of the claims arising from acts performed or deeds executed within the territory of the Republic.

Justice, so far as relates to its essential character, is never diversified in its manifestations and effects, whatever be the ground on which it may be shown or the country in which it is analyzed. Its power is always in direct line with the circumstances which engender it, or in the quality of the titles to which it is applied; therefore, the determination of those two Governments to throw aside Venezuela's opinion as to her domestic authority and the international law which supports that same sovereignty is incomprehensible. No less surprising was the disinclination on their part to examine the question on a truly judicial basis, as Venezuela had done from the beginning. When affairs were in this condition, both nations unexpectedly resolved to appeal to the extreme recourse of force in order that the Republic consent to what she could not in any degree consider in harmony with the prescriptions of justice. The pressure came, and was brought to bear when the country is still involved in the disasters of a civil war, and the Government dedicated to the task of pacification, through which alone can the Republic recover from her terrible distress. This coercive action comes when the country is feeling the sad results of certain deeds with which unfortunately are associated a number of circumstances from which arose, with justice, the series of claims and complaints presented by Venezuela to the Government of Great Britain since last January.

And, furthermore, this armed action comes soon after Venezuela had solemnly protested to the Imperial Government against the action of a vessel of the German navy in the waters of the Republic during the months of October and November, both against the rights of the people and international agreement. The Republic has all the force of justice on her side; she feels that she is in the full possession thereof; but the Government is convinced of the futility of her efforts

to refer the solution of the difficulty to the calm path of justice, and is obliged to accept the only remedy at hand in order to avoid new disasters to the nation. But if the circumstances of the moment, to whose weight alone she bows, force her to such a sacrifice, she does not admit that the imposition thereof is equivalent to a diminution of the judicial rights of the Republic, victoriously sustained throughout the correspondence relative to the German and British claims. One thing is admitted under the pressure of force, at a certain time, under an exceptional title, and under a solemn protest, and another is that which unites to itself the immutable and permanent life of national interests.

The Government of the Republic, without separating itself in the least from the doctrine of the rights of the people and from constitutional rights with which its correspondence with the legations was inspired, and constrained only by the pressure of present circumstances, superior to all force, and which could not have been foreseen, sufficiently authorizes your excellency to accept in its name and representation all necessary authority to peaceably settle the question, and admits, as an exceptional case, without it constituting in any manner a precedent, the recourse of a mixed commission for the examination and determination of that which may be decided upon. Both the formation of said commission and the method of payment shall be the subject of a future agreement which will be celebrated by your excellency whom the Government of the Republic had designated as its arbiter for the solution of the grave question, even before the allied forces of England and Germany had committed the first aggressive act. That appointment by Venezuela, which was anticipated as much as possible, is an eloquent testimony of the conciliatory spirit which is found animating the Federal Government, and was prompted by the same motive which now fully empowers your excellency to abandon at once the question on the road to settlement in the best manner that circumstances will permit for the national interests.

Upon communicating to your excellency the final reply of the Government of Venezuela, as a result of the extreme coercion exercised against the Republic by two nations of great material power, I repeat the expressions of gratitude which are your due, for the cordial and friendly manner shown by your excellency in your interposition in so grave a difficulty.

Accept, your excellency, the renewed assurance of my highest and most distinguished consideration.

R. LÓPEZ BARALT.

His Excellency Mr. HERBERT W. BOWEN,

*Envoy Extraordinary and Minister Plenipotentiary of the  
United States and Charged with representing British and  
German Interests.*

## VENEZUELA'S "YELLOW BOOK," PAGES 85-96.

## THIRD PART.—ITALY.

[Translation.]

No. 372.]      LEGATION OF HIS MAJESTY THE KING OF ITALY,  
*Caracas, August 27, 1900.*

SIR: Referring to the formal exceptions which I had the honor to present verbally to the lamented predecessor of your excellency relative to the decree issued by the National Executive April 23, 1900, with regard to the claims arising from the latter part of the war, I am now authorized to state to the Government of the Republic that the Government of the King of Italy can not attribute to the said decree of April 23, 1900, any value whatever, so far as the Government of Italy is concerned, or admit that it in any way can effect the action which at the proper time the Government of the King may exercise in the interests of Italian subjects prejudiced during the war of 1898 to 1900.

I have the honor to reaffirm to your excellency the assurances of my highest and most distinguished consideration.

G. P. RIVA.

His Excellency Dr. EDUARDO BLANCO,  
*Secretary of Foreign Relations.*

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No. 1138.]      DEPARTMENT OF FOREIGN AFFAIRS,  
 OFFICE OF FOREIGN PUBLIC LAWS,  
*Caracas, August 30, 1900.*

SIR: Your excellency refers in your note of the 27th, No. 372, to the exceptions which were verbally made to my predecessor relative to the executive decree of the 23d of last April, and of your being instructed by the Government of the King of Italy to state that no value can be attributed thereto so far as concerns said Government, or to permit that it can effect any action which at a proper time may be taken in the interest of Italian subjects which may have been prejudiced by the war of which Venezuela was the theater during recent years.

The spirit and form of that note has excited the serious attention of the Government, and, in the name of the supreme head of the Republic, I shall set forth, with the greatest respect, to your excellency the reasons why its contents have excited surprise.

It is an axiom of public law that all States should be considered equal in everything affecting their judicial capacity, the exercise of their powers, and the fulfillment of their obligations. The eminent Italian, Pascual Fiore, one of the publicists who most categorically announces this principle of political equality, without which the equi-

brium of international society would be impossible, and who, before setting this forth in article 143 of his codified law, states in article 113 that to each State is given the exclusive power to judge the equity of its own laws and of their timeliness and efficiency relative to the protection of rights in all its manifestations. It may be said that in the correlation of such maxims is united territorial sovereignty for the exercise thereof would clearly suffer limitations should it in any way be subordinated to the influence of foreign interests or be influenced by the force of desires foreign to itself.

The executive decree cited by your excellency did not refer to any certain cases, nor did it have in view any titles that might directly interest any particular nation. It was a provision of a general nature issued in view of a domestic necessity. Articles 9 and 10 of the constitution of the Republic furthermore do not allow the least difference between natives and foreigners in measures of this sort, neither does international law allow the establishment of circumstances that would place persons who are natives of another country in a judicial position superior to the natives of the respective State.

Every person who voluntarily goes to a foreign country [states Fiore] is obliged to submit himself during his residence therein to the laws of safety and the police laws. He can not object because the application of said laws are more or less just or burdensome measured by the laws of his own country or those of other States, but is obliged to observe the same form of procedure and has the same rights and guaranties that exist for the citizens of the State. (D. I. C., art. 173; International Law Codified, art. 173.)

The analogy of the foregoing principle with the cases in which public necessity demands measures like those of April 23 is the best pledge of the right under which it was issued and the best title to its general acceptance.

Suppose, your excellency, that the legislator found it necessary for every act related to public interests to consult the opinion of corresponding legislation in countries from which foreigners resident in the territory have proceeded, and that such necessity referred to measures not opposed to international law, or, in other words, were in entire harmony with the principles of safety or domestic order which the nations have accepted and which the times sanction and approve. Imagine such a condition, your excellency, and I have confidence in your learned judgment as to the results. As there would be no way to establish the necessary harmony between the respective act and domestic legislation if it were obliged to obey for any reason the diverse opinions which form the constitutional order of other States, there would necessarily follow a series of contradictions in theory and of difficulties in practice which would render impossible or nullify every act of the administration. It was such a line of arguments that writers followed when they declared that

“it is impossible to consider a state as sovereign and independent, unless it has the power to dictate its civil and penal legislation according to its convenience, its necessities, and its interests.” (Calvo, D. I. T. P., par. 513.)

The equality of rights between natives and foreigners is, as your excellency knows, the pledge of order and a saving principle of justice, for otherwise the incorporation of strange elements into the national life, would constitute, especially in countries with a sparse population, a motive for international discord, engendered by that natural sentiment in man which recognizes that the imposition of the same duties must correspond in like circumstances to the rights of all.

When the treaty of June 19, 1861, was celebrated between Venezuela and Italy, which is still in force, those principles and necessities were carefully guarded. In article 4 it was stipulated that “in case of revolution or civil war the citizens or subjects of the contracting parties shall have the right in the territory of the other to be indemnified for the losses and damages caused to their persons or property by the constituted authorities of the country in the same manner and according to the laws which govern or may govern in the event of natives having the right to indemnity.” This provision was the complement or result of that contained in the beginning of the same article, according to which the citizens and subjects of the contracting states shall enjoy “the same rights and privileges that are granted to natives, submitting themselves to the conditions imposed upon the latter.”

The principle which inspired that part of the Italian-Venezuelan covenant conforms perfectly with that stated by Bluntschli in article 387 of his Codified International Law. “No State,” says he, “is obliged to concede to foreigners personal privileges or rights incompatible with the constitution or fundamental law of the country.”

From the foregoing your excellency will no doubt understand the surprise with which the note of the 27th instant has been considered and the zeal with which it solicits the rectification of the subject treated therein. The upright spirit of the Government of the King and the lofty judgment which distinguishes your majesty, encourages the executive power to here declare with all sincerity that in international affairs it is impossible to accept the sentiments of said note, as it is opposed to the constitution of Venezuela, to the principles of jurisprudence previously invoked, and to the treaty at present in force between the Kingdom and the Republic.

Please accept, your excellency, the renewed assurances of my highest and most distinguished consideration.

EDUARDO BLANCO.

His Excellency Mr. JUAN PABLO RIVA,  
*Minister Resident of His Majesty, the King of Italy.*



[Translation.]

No. 246.]      LEGATION OF HIS MAJESTY THE KING OF ITALY,  
*Caracas, April 24, 1901.*

SIR: Referring to the verbal exceptions which I had the honor to make to your excellency with respect to the decree of the executive power of January 24 of the current year relative to the claims against the State arising out of the last revolution, I now comply with the duty of informing your excellency that the Government of His Majesty, the King of Italy, has charged me to state to the Government of the Republic: That it absolutely can not admit the exclusion of the Italian claims prior to May 23, 1899, and which includes the entire revolutionary period from 1898 up to the date above cited; that it can not accept the exclusive competence of the high federal court, to which is reserved the final decision of the claims in virtue of the decree of February 14, 1873, made operative again by the decree of January 24, 1901; that it can not accept the payment of claims to be made according to the provisions of article 12 of the decree of June 9, 1893, also revived by the above-mentioned decree of the 29th of last January.

I have also been instructed to add, as I hereby do, the most ample exceptions in favor of the rights of the Italian claimants.

I trust that the Government of the Republic will consider it worth while to take into account the equity of the propriety of the considerations that influence the Government of the King, and will have the goodness to recognize the advantage of making a dispassionate examination of the questions, so that a way may be found of arriving at a solution which, respecting all the prerogatives, may at the same time satisfy all the just exigencies of the occasion and all the varied interests discussed.

I am pleased to assure your excellency that you can count fully on my earnest desire and hearty cooperation in the effort to arrive at an equitable and satisfactory solution, which can not be other than the good desired by the efforts of all.

I have the honor to confirm to your excellency the assurance of my highest consideration.

G. P. RIVA.

His Excellency Dr. EDUARDO BLANCO,  
*Secretary of Foreign Affairs.*

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No. 542.]      DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAWS,  
*Caracas, May 2, 1901.*

SIR: Upon your excellency referring on August 27, 1900, in note No. 372, to the decree of April 23 of that year relative to the period

in which claims arising from the war should be presented, and which you presented in the name of your Government, exceptions analogous to those which were contained in your communication of the 24th of last month, received during the afternoon of the 25th. And as this department in its reply at that time stated, the reasons based both on domestic and international law which obliged it to declare said claims inadmissible, and also the entire legality of the power by which the chief executive issued the decree, I consider it proper to repeat at this time in all its details the contents of said reply, not however without enlarging upon some judicial opinions, in order that the learned judgment of your excellency and the wise opinion of the Government may reconsider the subject in accordance with the circumstances and its real character.

It is noted with surprise that your excellency considers unacceptable the exclusive jurisdiction of the high federal court as to the claims of Italian subjects, as though the intervention of such an elevated tribunal on such a subject did not depend upon an old law dictated in the exercise of a sovereign power by the authorities of Venezuela and officially communicated upon the date thereof (1873) to all the States of the Republic and to foreign nations. To exempt a foreigner on account of the fact that he is a foreign citizen from the effects of a principle sanctioned both by the constitution of the country where he resides, included in the civil code and specifically assured by a domestic law, would be equivalent to the creation of a condition eminently calculated to engender great difficulties for the nation which opens its doors to just desires and honorable aspirations. The establishment of that difference which in international law has come to be called "an exorbitant and dangerous privilege" might be assumed as was very judiciously stated by the department of foreign affairs of Peru in the celebrated circular of October 26, 1897, when it said that governments according to this view are nothing more than "simple insurance companies against dangers and losses which are not caused by them, and which in the majority of cases they could not prevent."

When natives and foreigners are equal as to the means of obtaining the recovery of a right or the determination of a title, the latter can have no cause to argue any lack of security, as it is not to be presumed that the legislator by virtue of his office, a representative of the national sovereignty, would sanction acts capable of operating in opposition to his own constituents.

The high federal court in its capacity as the first tribunal of the nation becomes the most efficacious guarantee of justice for the case under discussion. Venezuela gave to the highest of its judicial bodies the examination and decision of those questions in order to facilitate the action of the party in interest and relieve him from applying to a

number of courts prior to the final investigation of the alleged rights. In making equal the conditions for both foreigners and natives, domestic sovereignty took into account the practices and principles of international law and the necessity of attracting elements that it would be profitable to assimilate, without prejudice to any sentiment of justice or maxim of equity.

If it were within the power of all other States or any of them to ignore the laws and regulations which a country enacts relative to interests located within its territory the employment of one of the most sacred powers of the people when constituted into an independent nation would be rendered difficult or at least problematical. It would be necessary for each act required or demanded by the public good to consult with foreign States who, by the exercise of such an abnormal prerogative, would be converted ipse facto into critics of the State that would thus consent to the limitation of its sovereignty. Therefore Calvo says (par. 513) that "It is impossible to consider a State as sovereign and independent unless it possesses the power to dictate according to its convenience, its necessities, and its interests, its civil and penal legislation." Further on (par. 514) he adds that "Every State has just and legitimate jurisdiction over the persons and things found within its territory, as well as over the acts performed therein, without reference alone to the native subjects of the State, but also with reference to the foreigners resident therein." This principle of international law which your excellency will find denied by no writer nor questioned by any organized body is sufficient to describe the condition of affairs and demonstrate that in the law which gives to the high court general jurisdiction over the claims against the nation there is nothing to throw aside or of doubtful application.

For the courts of justice to take cognizance of claims arising from damages caused by war is neither new in civil life nor unknown to international law. Without piling up citations upon this point, I consider it sufficient to recall with the eminent Fiore that "when a conference met in Paris in 1869 for the purpose of passing upon the difficulties between Turkey and Greece, one of the important rules established by the declaration of February 15 was that Ottoman subjects were obliged to apply to Greek courts in order to claim indemnity for the losses caused by the acts of individuals, and for those suffered during the war. (New International Public Law, according to the necessities of Modern Civilization, par. 653.) It should be mentioned that in paragraph 648 that when the learned Italian referred to the duty of protecting the citizens themselves he establishes under a letter *a* the first rule, as follows:

Protection is illegal and unjustifiable when its purpose is to secure for the natives resident in a foreign country a privileged position.

This maxim or precept assumes the highest importance because action contrary thereto would often oblige the State in which the foreigner resides to consider him, not as he is in reality and as the industrious Italian ever will be considered in Venezuela, an element of progress or a factor which enjoys the advantages of life on a level with the natives, but as a sort of increasing danger capable of gradually constituting the greatest of dangers to the public administration and to the national sovereignty.

Nor is the formal invocation of the judicial maxims to which Venezuela appeals in claiming it to be inadmissible for diplomacy to consider questions relative to claims of this class a new thing in the diplomatic correspondence of nations. The Italian legation itself in treating of a similar subject in a note which was addressed to the royal department of foreign affairs in Rome, August 30, 1894, set forth the result of a free investigation from which was deduced the existence of a certain uniform decision to refuse to insert anything of the kind or anything foreign to the equality of treatment established by each code of domestic law.

Here are the paragraphs to which I refer:

The Italian school having advanced the principle that judicial opinions deduced from natural law are those which should serve as a rule for the solution of questions which refer to the liability of a State for losses which may be the object of an international claim, has opened the way for an indefinite variety of solutions of the complex problem.

And the jurisprudence presented is not less uniform and explicit. When the liability of Chile with regard to the losses suffered by neutral foreigners during the war with Peru was discussed, while the Italian Government affirmed that it was its opinion "that all losses not caused by force majeure or by the necessities of war should be considered as subject to obligatory indemnization," it was the right of the local government to pass upon any losses suffered by foreigners. The Government of France declared that, according to the doctrine it had always held, "the losses which neutrals suffer in war, in strict justice are not to be indemnified, and that indemnity can only be requested by appealing to sentiments of equity." The English Government, even more zealous of the principle of noninterference, announced the maxim that "the foreign subjects who suffer the consequences of war have no more right to secure compensation than the natives of the country." The Spanish Government assuming an attitude of absolute reserve, stated that "rather than occupy herself with the interests of her subjects prejudiced by that war, she should occupy herself in maintaining amicable relations with Chile, so as not to injure the political and economical interests of Spain in her ancient colonies;" and, finally, the cabinet of Berlin absolutely evaded the expression of an opinion on the question that in any way would compromise it with the claimants, not, however, without manifesting its determination of not departing from the rule which Prince Bismarck clearly defined when he said: "The Imperial Government does not consider itself obliged to protect its subjects who for business reasons go to a foreign land except so far as the general interests of the Empire permit."

The truth is, and the history of diplomatic questions during these past years clearly demonstrate it, that at the close of this century, while thinkers are making greater efforts to find in the indefinite sphere of theoretical ideas the conciliation of human differences, the government of States shows more than ever a marked tendency to draw the rule of their procedure from positive opinions of practical utility.

The American Republics on their part, in defense of their rights and interests, have dedicated all their efforts against what they call an excess of diplomatic protection in support of foreign claims.

Your excellency knows that with reference to claims there are, as in all human business susceptible of investigation, opposing interests whose examination pertains alone to those who have in their hands the direct springs of justice.

To take such questions from their proper sphere in order to carry them to that of the executive power, where opposing action can not be raised or admitted, would be to change the natural order of things and even mix attributes and powers to the detriment of the very right alleged or to the intrinsic nature of all the circumstances in the case. A little consideration given to such a delicate question would produce the conviction that, to observe such proceedings without any protest, would reduce the executive departments to mere bureaus of information, and the foreign legations to mere agents, and the orders of the heads of bureaus and secretaries to the simple exercise of powers analogous to those employed without recourse in the ordinary course of civil affairs.

Fearing such an abnormal condition and careful to avoid it, governments often define in special treaties the condition of equality, so far as relates to the protection and security of persons and property, that should exist between their own subjects or citizens and those of the other contracting nation.

Forty years ago, in a treaty still in force, Italy and Venezuela so agreed. Article 4 provides the most complete parity between the subjects of the kingdom and the citizens of the republic living in the territory of the other, and explicitly provided such parity, so far as regards the manner of obtaining indemnity for losses or damages arising from domestic discord. Therefore, in addition to the general principles of law from the principal imminent in sovereignty, and the eternal and unchanging precepts of justice, there is that special reason why the Government of Venezuela should respectfully declare, in reply to the note of your excellency, the impossibility of accepting any of the exceptions therein enumerated relative to the claims of Italian subjects. The decree of January 24 last past, so far as it relates to such claims, and the other provisions therein cited, in so far as they are applicable, constitute the only rule which those interested can employ for the examination of the rights or titles which they allege.

Accept, your excellency, the renewed assurances of my highest and most distinguished consideration.

EDUARDO BLANCO.

His Excellency Mr. JUAN PABLO RIVA,  
*Resident Minister of His Majesty, the King of Italy.*

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VENEZUELA'S "YELLOW BOOK," PAGES 96-101.

[Translation.]

No. 167.]      LEGATION OF HIS MAJESTY, THE KING OF ITALY,  
*Caracas, April 19, 1902.*

MR. MINISTER: By order of my Government, and referring to the communication which I had the honor of addressing to your excellency's predecessor the 24th of April, 1901, No. 246, I hasten to transmit to your excellency a list of 123 claims presented by Italian subjects for the purpose of obtaining indemnity from the Government of the Republic for the damages occasioned by the civil wars during the period from 1898 to 1900.

The claims of which it treats were admitted by this royal legation, after being conclusively proved in accordance with the judgment and instructions of the Government of the King, and it having recognized only the actual damages and losses, with the exclusion of moral injuries and of the loss of revenue.

The total value of the claims amount to 2,810,255.95 bolivars, for the effectual payment of which I request the Government of the Republic to deign to take the steps necessary to this end.

If the National Congress, now convened, should come to any decision relative to the adjudication of the claims of the same title presented by the imperial legation of Germany, the Government of the King requests that the identical favorable measures which that Congress shall eventually determine upon for the adjudication of the German claims, or those of any other nation, shall be applied to the Italian claims.

I have the honor to inform your excellency that all the original documents in support of each of the claims will be found in this royal legation, ostensibly for the examination by a delegate of the Government of the Republic; but to facilitate such examination on the part of the Government I have ordered them copied, and I reserve the transmittal to your excellency of the 123 records until the copying of the documents in the respective cases be finished.

I have the honor of renewing to your excellency the assurances of my highest and most distinguished consideration.

G. P. RIVA.

His Excellency Señor J. R. PACHANO,  
*Minister of Foreign Affairs.*



No. 540.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF PUBLIC FOREIGN LAW,  
*Caracas, April 24, 1902.*

MR. MINISTER: I submitted to the constitutional President of the Republic your excellency's courteous note of the 19th instant, received in this department with a list of claims of Italian subjects for damages which they allege were occasioned by the wars which occurred in the Republic between 1898 and 1900.

In view of the fact of your excellency's beginning by referring to a communication from the honorable legation in your charge, dated the 24th of April, 1901, and using it as the subject-matter for your present communication, when the former had been answered the 2d day of May following, with a full explanation of the doctrine averse to procedure in such matters other than determined by the legislative body of the country, much surprise has been occasioned to the supreme magistrate that the request should now be presented in this form, when no objection whatever had been offered to the arguments which were then advanced in the name of the National Sovereignty, in support of the maxims of public law applicable to the case, and of the stipulations of the treaty in force between Venezuela and the Kingdom of Italy, in order to prove the impossibility of admitting any intervention whatever in that direction other than that foreseen by the laws which regulate it.

Your excellency knows that neither public nor private laws contain any ambiguity with regard to the setting forth of a just claim, and when this is based on approved facts and on defined circumstances, all new proof or argument in its support becomes superfluous. Venezuela has legislated on this point without considering other principles than the equality of civil conditions between natives and foreigners; principles universally respected and to the practice of which the worthy Italian nation reassented in signing the treaty of June 16, 1861.

It is opportune to here state, according to the data filed in the department relative to these cases and verified by the publication made in No. 8262 of the Official Gazette, that in the name of many Italian subjects there was presented to the "junta calificadora" (board of examiners), created by the decree of January 24, 1901, the records relative to certain alleged damages, and that that body, in the exercise of its legitimate rights, recognized such of them as appeared to have been based on those conditions which are essential to make the title valid.

In view of the foregoing and of the other antecedents which bear on the case, and to which this department has already referred in its correspondence with your honorable legation, the President considers it unnecessary to unfold other proofs in support of the impossibility

mentioned, and he has given me instructions to reiterate to your excellency the manifestations made in the notes of Señor Blanco of the 30th of August, 1900, and of the 2d of May, 1901, not without adding, by way of information, that the Congress of the Republic, deferring to a suggestion made by the same supreme magistrate in his recent message, will arbitrate, perhaps very shortly, the manner for determining the matter of the claims which through fortuitous circumstances failed to be presented to the junta especially created for the study and qualification of those arising from the war begun in May, 1899.

The list forwarded by your excellency will be filed in this office as part of the communication of the 19th, which is here answered.

I pray your excellency to accept the renewed professions and assurances of my highest and most distinguished consideration.

MANUEL FOMBONA PALACIO.

His Excellency Señor JUAN RIVA,

*Minister Resident of His Majesty the King of Italy.*

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[Translation.]

No. 299.]      LEGATION OF HIS MAJESTY THE KING OF ITALY,  
*Caracas, June 28, 1902.*

MR. MINISTER: As a continuation of the note I had the honor to address to your excellency on the 19th of April last, No. 167, and limiting myself to duly acknowledging the reply of the 24th of said April sent to me by his excellency Señor Dr. Manuel Fombona Palacio, at that time in charge of the Department of Foreign Affairs, I have the honor to remit to your excellency, in compliance with the instructions of my Government, the documents relative to the hundred and twenty-three claims, the list of which I inclosed in my note above mentioned, and which I reserved to send until the copies of the originals in the possession of the chancellery of the royal legation should have been copied.

I have the honor to repeat to your excellency the assurances of my highest and most distinguished consideration.

G. P. RIVA.

His Excellency Señor Gen. DIEGO B. FERRER,

*Minister of Foreign Affairs.*

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No. 175 bis.]      DEPARTMENT OF FOREIGN AFFAIRS,  
 OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, June 30, 1902.*

MR. MINISTER: My predecessor, in referring on the 24th of April last to the list of claims of Italian subjects, mentioned by your excel-

lency in the note addressed to me on the 28th instant, under No. 299, received to-day, reiterated the arguments adduced by this department in a previous correspondence in order to show the impossibility of accepting in this respect any direction other than that determined by the legislative body of the country.

All the surprise occasioned by the presentation of the list in a form considered as unacceptable was at that time expressed, and there was adduced in explanation of this surprise the reason that not the least objection had been made to any of the arguments advanced in the name of the national sovereignty, supported by the best-known principles of general law and by the stipulations of the treaty in force between Venezuela and Italy in order to prove the impossibility of admitting any intervention in the direction of claims other than that specifically provided by the legislative body of the country.

If there was surprise then, as the legation was informed, much greater has been that occasioned by the note of the 28th instant, to which your excellency attached a series of documents of which it is impossible for this department of itself to assume charge, for the reason that they treat of affairs pertaining to a different sphere of administration, as previously demonstrated.

On this account, and in accordance with recent instructions from the President, I reiterate to your excellency in a most respectful manner all that has been set forth in the communications of the 30th of August, 1900, of the 2d of May, 1902, and of the 24th of April, 1902, communications sufficiently explicit as to the precedents which support the rights of Venezuela in this matter, the doctrine which strengthens and the opinions which corroborate it. And inasmuch as it relates to nothing less than one of the first attributes of the State, greater must be the obligation to declare categorically and most imperatively the necessity of sustaining it in all its fullness. None of the legitimate interests which grow or are developed under the vigilance of the laws of a country, can, without detriment to the most elementary principles of law, pretend that appeals of different origin from those which submit themselves to the respective regulations of the country, aid in any way, in their exposition or adjudication. This would be tantamount to foregoing in the present case one of the stipulations of article 4 of the treaty of 1861, and to relinquishing on certain points the operations of domestic sovereignty which alone is called upon to give the most befitting judicial solution in cases of a judicial nature, whatever may be that class to which these cases may belong.

The documents remitted by your excellency with regard to this matter, can not be acted upon by this department and must therefore

remain as part of the communication of the 28th which is here conclusively answered.

Accept, your excellency, the renewed professions and assurances of my highest and most distinguished consideration.

DIEGO BTA. FERRER.

His Excellency Señor JUAN PABLO RIVA,  
*Resident Minister of His Majesty, the King of Italy.*

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VENEZUELA'S "YELLOW BOOK," PAGES 101-102.

[Translation.]

No. 532.] LEGATION OF HIS MAJESTY, THE KING OF ITALY,  
*Caracas, December 11, 1902.*

MR. MINISTER: In the communication of the 24th of April, 1901, No. 246, I had the honor to inform the minister of foreign affairs of the Republic that in the adjustment of the Italian claims relating to the revolutionary period beginning with the Hernandista movement, in March, 1898, and closing with the advent of General Castro to power in October, 1899, the Government of His Majesty, the King of Italy, could not accept the regulations established by the decree of the federal executive of the 24th of January, 1901, and the Government of the King mentioned that determination, notwithstanding the argument, set forth in the note of the honorable minister of the Republic, dated the 2d of May, 1901, No. 542.

Therefore, the royal legation, conforming itself to the instructions of the Royal Government, examined agreeable to the standards prescribed by the latter, the claims presented to it for the above said period, and with the communication of the 19th of April, 1902, No. 167, I had the honor to transmit to the minister of foreign affairs a list consisting of 123 Italian claims for the total sum of 2,810,255.95 bolivars, praying the Government of the Republic that it deign to take measures tending toward its payment.

By command of the Government of the King, I now address anew to the Government of the Republic, the prayer that it deign to order without delay the payment of the sum of 2,810,255.95 bolivars, the amount of the Italian claims for the revolutionary period of 1898-1900, claims examined and adjudged valid by the royal legation.

I have the honor, moreover, to state to your excellency that the Government of the King expressly reserves all claims which, subsequent to the period mentioned, were or may be presented by Italian subjects, whether for damages resulting from the civil war begun in 1901, or from any other title or credit or action against the Government of the Republic, and asks, therefore, that the Government

of the Republic be good enough to declare itself disposed to give to such claims the attention which may put an end to further discussion; accepting the opinion of a mixed commission.

Finally, I discharge the duty of signifying to your excellency that the Government of the King, believing that the Venezuelan Government will satisfy its demands, reserves, however, all further action in the event of the Italian claims not being equitably adjusted.

I have the honor to reiterate to your excellency the assurances of my highest and most distinguished consideration.

G. P. RIVA.

His Excellency Señor Dr. R. LÓPEZ BARALT,  
*Minister of Foreign Affairs.*

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VENEZUELA'S "YELLOW BOOK," PAGES 102-107.

No. 1460.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAWS,  
*Caracas, December 13, 1902.*

SIR: The Government of the Republic considered yesterday the note of your excellency sent to this department on the 11th instant at 6 p. m. relative to the claims of Italian subjects, which have been the subject of correspondence with the Italian legation. Your excellency will remember the dates referring to the official regulations of Venezuela relative to that subject and also one of the numerous occasions upon which this department stated the arguments against the opinion formed upon the subject by the Government of the Kingdom. There accompanied the note a list of the claims presented on the 19th of April of the present year, and after requesting that without delay provision be made for the payment of the amount thereof, explicit exceptions are made in the name of the Government with reference to other claims that may be presented corresponding to a period later than that included in the list mentioned. The note concludes by asking for special procedure with respect to those other claims, and indicates that further action shall be reserved in case the claims of Italian subjects should not be satisfactorily arranged.

In order to fully follow the correlation of ideas relative to this subject, and which define the same, it will be necessary to repeat what Venezuela has set forth relative thereto in all the notes directed to your excellency from August 30, 1900, up to the one addressed to you June 30 of the present year; but as said correspondence has as yet been productive of no good, it will be sufficient to demonstrate, in harmony with the note of day before yesterday, that there is really

no difference between the wishes of the Italian Government and the legal possibility of assenting thereto on the part of Venezuela, providing that what is desired is the security of the interests that are really identified with said claims. It is not to be presumed that the ideas of the Government of His Majesty can be different, and as every judicial opinion advanced by Venezuela in the course of the correspondence relative to this subject, far from attempting in any way to evade the fulfillment of obligations foreseen by the national laws, conformed exactly thereto according to the essential nature of each claim, as can be proved by another examination of the notes of August 30, 1900, of May 2, 1901, and of April 24 and June 30 of the current year, and the Executive power believes that there is no room for a difference, even looking at the subject from the specific point of view to which the communication of your excellency wishes to confine it, when said obligations are defined as to their character, and prosecuted according to the treaty of 1861 between Italy and Venezuela.

The action of the Government of the King can not go contrary to that treaty, nor can the Government of the Republic violate the same, so that in its provisions can be seen by all an efficacious guaranty of the interests of Italian subjects in the particular case mentioned by your excellency. The Government therefore sees no reason to take the question from its natural sphere, especially at a time when the Federal Executive is using every effort to put an end to the difficulties arising from the war and others of an unforeseen nature which have embarrassed action which he has already initiated for the purpose of restoring to a normal condition the different branches of the public administration. One of these branches is precisely that to which the note of your excellency refers and to which has been given all possible attention in accordance with the provisions specially adopted by the last Congress in favor of claimants for losses caused to their persons and property by acts of the constitutional authorities of the country. As soon as the Federal Executive assured the Government of the King through his legation in Caracas of the strict application of the clauses of the treaty of 1861, the subject, which was the object of the note of day before yesterday (an application entirely in harmony with the antecedents cited), no reason for disagreement could arise serious enough to change the cordial relations that have ever been maintained between the Kingdom and the Republic.

Please accept, your excellency, the renewed assurances of my highest and most distinguished consideration.

R. LÓPEZ BARALT.

His Excellency Mr. JUAN PABLO RIVA,

*Resident Minister of His Majesty the King of Italy.*



[Translation.]

No. 542.]      LEGATION OF HIS MAJESTY THE KING OF ITALY,  
*Caracas, December 16, 1902.*

SIR: I have the honor to advise your excellency, for the information of the Government of the Republic, that the Government of His Majesty the King of Italy, as a result of the reply of your excellency of the 13th instant, No. 1460, relative to the claims of Italian subjects, has resolved to retire from Caracas its resident minister, together with the personnel of the royal legation.

I also have the honor to advise your excellency that by virtue of the orders of his excellency the secretary of foreign affairs I have intrusted to the envoy extraordinary and minister plenipotentiary of the United States of America the protection of Italian subjects and of Italian interests in Venezuela.

Please to accept, your excellency, the assurance of my highest and most distinguished consideration.

G. P. RIVA.

His Excellency Dr. R. LÓPEZ BARALT,  
*Secretary of Foreign Affairs.*

Note relative to the coercive action of Italy and the protocol signed in Washington by the representative of said nation.

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No. 1470.]      DEPARTMENT OF FOREIGN RELATIONS,  
OFFICE OF FOREIGN PUBLIC LAWS,  
*Caracas, December 17, 1902.*

SIR: His excellency the minister resident of His Majesty the King of Italy on the 11th of the current month, after the combined squadrons of England and Germany had already committed their first acts of hostility against Venezuela, addressed an official note to the Federal Government in order to secure the immediate payment of various claims of Italian subjects similar to those presented by the two nations mentioned with a manifestation of armed force, and, furthermore, said note was intended to secure the submission of other claims, arising at another time, to the examination and decision of a mixed commission. On the 13th the secretary of foreign affairs replied in accordance with the prior correspondence with the legation—a correspondence in which was sufficiently defined the judicial aspect of the question—after which there was set forth in the reply the formal and friendly declaration that in the judgment of the Venezuelan Government the claims should be absolutely referred to the explicit provisions of the treaty in force between the Kingdom and the Republic, and was far from opposing the perfect harmony long

maintained between the two nations. The treaty to which I refer contains in article 4 a provision whose literal meaning is as follows:

In case of revolution or civil war the citizens and subjects of the contracting parties shall have the right in the territory of the other to be indemnified for the losses and damages caused to their persons and properties by the constituted authorities of the country in the same manner and according to the laws in force therein by which natives themselves would have the right to claim indemnity.

Yesterday, on the 16th of the current month, while the Government was deeply engaged in searching for a solution to the grave emergency raised by the attitude of England and Germany, the representative of His Majesty Victor Emanuel III addressed another communication to the Federal Executive in order to advise him that as a result of the reply of the 13th, a reply prompted by the broadest spirit of conciliation, the royal Government decided to withdraw its legation from Caracas, and commended to your excellency the representation of Italian interests in the Republic, a power immediately granted by the Government with the temporal condition of which your excellency is now informed and in harmony with the note of your excellency received this morning.

The act of the Government of Italy, so serious in itself, and even more serious on account of the occasion selected for its execution, not only indicates but demonstrates the existence of another conflict raised against the Venezuelan nation, as if from her poverty of material means of defense—unfortunately very far from corresponding to the magnitude and strength of her rights in the questions of claims—three powerful states of Europe have desired to make simultaneously said weakness a means of giving power to material force or to a position to which is necessarily opposed all principles upon which rest the common peace of the people. Before that show of force, before that purpose, which seriously wounds the political equality of cultured states, Venezuela must bow, but without the claims of Italy, carried so far, and against which the Venezuelan Government solemnly protests, constituting any precedent whatsoever in the sense of debilitating the lofty maxims, the universal principles, the foundations of judicial order with which the executive power of the Republic was supported from the beginning of its correspondence with the legation, in order to find in the procedure provided by national laws and by the treaty in force between Venezuela and the Kingdom the only possible solution of the subject.

After the above statement, which justice demands and national sovereignty requires, the Government of the Republic fully authorizes your excellency to accept in its name and representation whatever may tend to the pacific adjustment of the question, and admits, as a strictly exceptional measure, the recourse of a mixed commission,

after which examination shall decide the other claims of a like nature belonging to another period to which reference has been made.

Upon thus stating to your excellency the decision which the Government has absolutely been obliged to adopt by a show of force with respect to the Italian claims, you are requested in the name of the Venezuelan Government to exercise the petitioned intervention in order to remedy a very grave difficulty.

Please to accept, your excellency, the renewed assurances of my highest consideration.

R. LÓPEZ BARALT.

His Excellency Mr. HERBERT W. BOWEN,  
*Envoy Extraordinary and Minister Plenipotentiary of the  
 United States and in charge of Italian Interests.*

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VENEZUELA'S "YELLOW BOOK," PAGES 111-115.

Result of the debate of the National Congress on the three protocols of the 13th of February.

Report of the high commission of foreign affairs, charged with the consideration and report of the protocols signed in Washington by the commissioner of Venezuela and the representatives of Germany, Great Britain, and Italy.

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CITIZEN PRESIDENT OF THE CONGRESS:

The three protocols which the Federal Executive has just presented to the Congress as the termination of the question under dispute against the Republic by the German-Anglo-Italian Alliance can not be considered as the equal of those international agreements of normal and just character in which reciprocal interests and the mutual convenience of the contracting parties are carefully guarded. To attribute to those protocols the qualities virtually foreseen by the constitution in No. 16 of article 54 is absolutely impossible, inasmuch as they are based on conditions which the Executive power, with great courage and patriotism, in keeping with the greater abundance of knowledge, has just repelled as being contrary to the radical principles of our constitution. The agent of Venezuela subscribed to those conditions under the compulsion of force in the very moments when the waters of the Republic were occupied by the squadrons of the alliance.

The agreements then obtained are the work or effect of circumstances which do not appear to have been anticipated in any part of our legislation. They have their origin directly in events beyond all normal engagements; not in stipulations concerted under the desire of reciprocal benefit. To submit them to the constitutional

procedure for examination by the Congress would be to withdraw them from the sphere of imposition in which they were prepared and signed, in order to raise them to a legal plane absolutely foreign to their peculiar nature.

Article 15 of the constitution of Venezuela forbids the Government to conclude with other nations any treaty which impairs the principles established in its articles 13 and 14; and as in none of the three protocols do those articles appear to be consulted, but, rather, manifestly omitted, one is forced to conclude that the agent of the Republic did not have in view their acceptance, but only to modify the violence of the circumstances which menaced the country under the irresistible power of the armed coalition. The condition created by those protocols is not, then, properly speaking, a lawful condition. Treating of a state of affairs truly abnormal, and itself abnormal, far from establishing any law, it excludes the application of all.

Note most clearly those irregularities on the part of the Italian protocol, wherein it refers to the treaty of June 19, 1861, since therein, at the same time that it is ratified and confirmed, its clauses are essentially modified, as if its only object were to substitute some stipulations for others, without regard to the process which is indispensable in order to give them validity. To modify a treaty in a sense contrary to that established and observed conformable to the same, for more than forty years of international life, is to annul it in all its parts, especially when it coincides in the possible coexistence of two clauses which are contradictory, by reason of containing regulations or principles diametrically opposed. If the fourth article of the treaty established, since 1861, that in the matter of indemnifications for damages resulting from civil war the subjects or citizens of one side could not have better claims than the natives of the other, the phrase introduced now in article 26, with entire confusion of ideas and of circumstances, results in establishing a difference between the two, which, to the destruction of the original stipulation, demolishes the general covenant of which it formed a part. The evident discrepancy between two articles renders impossible the existence of the treaty in which it is desired that both be contained.

The commission deems that given the nature of the three protocols, it is not incumbent on the Congress to exercise in respect to them the faculty conferred by number 16 of article 54 of the constitution; and if, as seems just and necessary, it may be desired in some way to strengthen the action of the Executive in that which conduces to their inevitable fulfillment, the legislative body may limit his intervention to a faculty of concrete and exceptional character, to the end that from the abnormal circumstances which determine at this point such obligations, there may never be deduced the least precedent for the political life of the Republic.

The commission also holds that the subsistence of the treaty with Italy is neither logical nor acceptable after that established by the protocol, and that it is necessary to urge the Executive power to use the authority with which he is empowered in article 27 of the same for its immediate denunciation.

Caracas, March 28, 1903.

J. P. ROJAS PAUL.  
SANTIAGO BRICENO.  
TOMÁS MÁRMOL.  
N. AUGOSTO B. BELLO.  
TRINO BAPTISTA.  
J. T. CARILLO MARQUEZ.  
E. SISO.  
RAFAEL TERAN.  
J. GONZALES PACHECO.

92d—45th.]

[No. 27.]

UNITED STATES OF VENEZUELA, NATIONAL CONGRESS,  
OFFICE OF THE PRESIDENT,  
*Caracas, March 30, 1903.*

CITIZEN PRESIDENT OF FOREIGN AFFAIRS, *Present:*

With your official letter of the 27th instant, No. 271, I received the three protocols which the agent of Venezuela with the representatives of Germany, England, and Italy signed in Washington the 13th of February last.

And I have the honor to state to you that, after their discussion in the session of the 28th ultimo, the Congress sanctioned the two resolutions which I herewith remit to you.

God and federation.

J. A. VELUTINI.

THE CONGRESS OF THE UNITED STATES OF VENEZUELA:

Whereas the protocols drawn up in Washington the 13th of February last by the agent of Venezuela and the representatives of Germany, Great Britain, and Italy were concluded and signed in the midst of a situation of force created in the Republic in a manner as unforeseen as it was abnormal;

And whereas such documents can not on that account be considered according to the form established for diplomatic negotiations begun, followed up, and concluded in the regular way;

*Be it resolved,* To withhold from the aforesaid protocols the sanction of the constitutional procedure pertaining to diplomatic treaties, and to limit its action in regard to them to authorizing the Federal Executive that he put them in operation, without permitting that any

of their clauses establish the least precedent in the political life of the Republic.

Given in the Federal Legislative Palace, in Caracas, the 28th day of March, 1903, the ninety-second year of Independence and the forty-fifth of Federation.

The President of the Senate,

J. A. VELUTINI.

The President of the Chamber of Deputies,

RAMON AYALA.

The Secretary of the Senate,

EZEQUIEL GARCÍA.

The Secretary of the Chamber of Deputies,

M. SILVA MEDINA.

**THE CONGRESS OF THE UNITED STATES OF VENEZUELA:**

Whereas the interpretation given in the protocol signed with Italy the 13th of February last to the treaty of the 19th of June, 1861, and the amplification or modification of some of its clauses, render impossible the subsistence of said treaty, inasmuch as it is in flagrant contradiction to some of its original stipulations, and of the principles which by virtue of the same were mutually observed by both parties;

*Be it resolved*, To urge that the Federal Executive with the utmost dispatch make use of the power contained in article 27 of said treaty with regard to its denunciation.

Given in the Federal Executive Palace, in Caracas, the 28th of March, 1903, the ninety-second year of Independence and the forty-fifth of Federation.

The President of the Senate,

J. A. VELUTINI.

The President of the Chamber of Deputies,

RAMON AYALA.

The Secretary of the Senate,

EZEQUIEL GARCÍA.

The Secretary of the Chamber of Deputies,

M. SILVA MEDINA.

**Venezuela's "Yellow Book," pages 235-249.**

*Correspondence relating to the revolutionary steamer Ban Righ (Libertador) and to the attitude assumed by the authorities of Trinidad.*

No. 1635.]

DEPARTMENT OF FOREIGN RELATIONS,  
OFFICE OF FOREIGN PUBLIC LAW,  
Caracas, December 31, 1901.

SIR: By decree issued yesterday, and which your excellency will find in the Official Gazette inclosed, the Executive power declared as



pirate the vessel which under the name of *Libertador* navigates in the waters adjacent to Venezuela and is notoriously in the service of the present disturbers of the interior peace of the country.

In communicating this measure I have the honor to ask that your excellency transmit it to the Government which you so worthily represent, with the request of the Executive power of Venezuela to the effect that at the arrival of said vessel in port or waters of Great Britain or her colonies, it be detained in conformity with the principles of international law applicable to the case, while the Executive power substantiate effectually the proof of the circumstances which have placed the said ship in that condition.

I renew to your excellency the assurance of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His British Majesty.*

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BRITISH LEGATION,  
*Caracas, January 3, 1902.*

MR. MINISTER: The articles of the decree which accompanied your excellency's note of the 31st of last month attribute to refugees in the Antilles conspiracy against the peace of Venezuela even to the point of arming a vessel of war, and present as proof assertions to that effect—advanced by General Matos in an address made on board that boat, presumably the *Ban Righ* or *Libertador*.

I have seen the address of that gentleman in the papers and I can find no such assertion from which such inference could be drawn. It is, moreover, a well known fact that General Matos came recently by steamer directly to Martinique from Europe and that the *Ban Righ* also came directly there from Europe without touching, as I can affirm, above all, at Trinidad.

That decree, immediately declaring the *Ban Righ* a pirate, says that it should be punished as such and offers a reward or prize to the war ships of all nations for her capture, as well as to all private ships provided with a license to sail in Venezuelan waters.

The only reason given in the decree for this declaration is that the *Ban Righ*, which had changed its name to that of *Libertador*, is not provided with the license of any nation and therefore forfeits its right of navigation.

Without entering into the question as to whether or not this constitutes a sufficient motive for its being declared a pirate, I am in position to state to your excellency that the Venezuelan Government has evidently been misinformed with regard to finding this boat unprovided with papers, as I have just learned officially that the

*Ban Righ* carries the English flag and is provided with British papers. As, therefore, the basis of this declaration is not exact, the declaration itself falls ipso facto to the earth. It is not then a pirate nor in any way conformable to the conditions for such qualification, which are set forth by the Venezuelan Government in this decree.

The Government of His Majesty has informed me that I might indicate to your excellency that it approves the language which I had the honor to officially address to your excellency the 31st of last month, advising the Venezuelan Government in a most friendly and at the same time most serious manner that it avoid any infraction of international law with regard to British lives and properties in case of the capture of the *Ban Righ*.

As this notice was given when, as the Government of His Majesty knows, as well as your excellency, I was not certain as to whether or not the *Ban Righ* was a British ship; and as I now moreover not only know that it is of British nationality, but likewise that it in no way complies with the condition stated by the Venezuelan Government by which it may be considered as a pirate, this approval would now seem to have double force.

I avail myself of this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Señor Gen. J. R. PACHANO,  
*Minister of Foreign Relations.*

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BRITISH LEGATION,

*Caracas, January 5, 1902.*

MR. MINISTER: In your excellency's note of the 31st of last month you inform me that a boat named *El Libertador*, which is known to be in the service of some insurgents, is navigating in Venezuelan waters, and at the same time you ask that I communicate to my Government your excellency's request, so that in the event of this ship's arrival in the waters of Great Britain or her colonies, it may be detained, in conformity with the principles of international law.

I have the honor to inform your excellency in reply, that without loss of time I shall forward this request. In the meanwhile, refraining as in my last note from entering into the general question as to whether in conformity with those principles this ship may be considered as a pirate—"hostis humani generis"—and without repeating the evidence contained in my reply that it is not a pirate, even according to the reasons advanced by the Venezuelan Government as proof that it is, I may assure the Venezuelan Government that that of His Majesty will proceed, as it always does in such cases, in conformity with the rules of British and international law.

I avail myself of this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Señor Gen. J. R. PACHANO,  
*Minister of Foreign Relations.*

No. 22.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, January 7, 1902.*

MR. MINISTER: The President of the Republic found your excellency's note of the 3d, relative to the revolutionary ship which, under the name of *Libertador*, is navigating in waters adjacent to the coast of Venezuela in an attitude hostile to the constitutional power, deserving of most serious consideration. Your excellency says that you have official information to the effect that this ship carries the British flag and is provided with British papers.

The fact of a steamer manned by persons inimical to the Government of Venezuela and notoriously employed in revolutionary operations being found under such circumstances is so grave a matter that its existence could scarcely be conjectured were it not testified to by that worthy legation.

The cordial relations which the Government of this Republic cultivates with that of His Majesty induce the belief that the British authorities or agents who held some part in the commission of the ship could not have proceeded with a precise knowledge of affairs, or have operated, perhaps, in an indirect way, since otherwise there would attach to them a very grave responsibility for which your excellency's Government would be held answerable in the spirit of justice with which every civilized nation like Great Britain surrounds its acts, and in conformity with the sincere sentiments which characterize its relations with this Republic.

The Government desires frankly to go into the earlier phases of this delicate subject, and with this end in view counts upon the friendly attitude of Great Britain.

As to the condition in which its own operations have placed the ship, and of which the decree of the 30th of December treated, the Government feels unable to accommodate itself to your excellency's view as stated in the aforesaid note, as well as that of the 5th instant.

The opinion set forth in the matter by your excellency is at variance not only with that held by other countries but with the jurisprudence established by Venezuela and which was the same in an analogous case accepted by Great Britain. I give here the precedent:

On the 15th of May, 1882, General Guzman Blanco, in his character

of President of the Republic, issued a decree based on circumstances similar to those which obtain at present, and of which information was given to the British legation for reasons also analogous to those which called forth my note of the 31st of December. The Hon. Mr. Malo O'Leary replied on the 17th of that month, informing me that he had referred the subject to London and to Puerto España, without adducing any reason against the measure, nor even by way of reserve. And while at the very time the minister of Venezuela at the court of His Majesty might have been recommending that action be taken, there was received from Lord Granville the reply, a copy of which is inclosed to your excellency in order that it may please you to consider how different an opinion then guided the action of the British Government, and how differently it regarded the request of Venezuela. The principles of friendliness between the colonies and the Republic were more in evidence then than now, although for the moment the cause of the difference which the legation has wished to establish is not discovered.

Thus, in view of the foregoing, and of the fact that the hostile attitude of the steamer *Barrigh*, called now *Libertador*, is clearly established, the President of the Republic hopes, through your excellency, to see categorically accepted the opinion that, not only by the Venezuelan Government but likewise that of His Majesty, said boat is a pirate, and with no such more reason, inasmuch as said boat in making use of the English flag, as it is now doing in acts contrary to international maritime law, it is deserving of repression and punishment on the part of Great Britain, and by virtue of its own internal laws.

Accept, your excellency, renewed protestations and assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His British Majesty.*

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[Document inclosed.]

DEPARTMENT OF FOREIGN AFFAIRS,  
*July 6, 1882.*

MR. MINISTER: I have the honor to acknowledge the receipt of your letter of the 22d of last month, in which you call my attention to the proceedings of a steamer known under the name of *Cantabro*, alias the *Colon*, which, as you inform me, does not carry national papers and has committed several acts of piracy in the waters of Venezuela and on the heights of the Venezuelan coast.

In reply I take the liberty to state to you that you may inform your Government that, in view of the reports which have been sent to the metropolis by the agents of His Majesty relative to the movements of the boat, orders have been given to the commander in chief of the North American station and the Antilles, to the commodore at Jamaica, and to the first naval officer in the Barbados to the effect that if any of His Majesty's ships meet it they should take measures to verify its papers and its nationality. The report which has been received with respect to this boat has also been communicated to the governor of Trinidad and to those of the other British colonies in the Antilles.

I have the honor to be, Mr. Minister, with the highest consideration, your very obedient and humble servant,

GRANVILLE.

Señor DE ROJAS.

No. 56.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, January 14, 1902.*

MR. MINISTER: On the 3d instant your excellency notified the Government of the Republic that you had received official information to the effect that the steamer *Ban Righ*, which had changed its name to that of *Libertador* and which the executive power has recently declared a pirate, flies the English flag and is provided with British papers. Such circumstance was considered as of the utmost gravity, inasmuch as the Government was possessed of categorical proofs of the hostility of the boat and sufficient reasons for believing that it was sent to Venezuelan waters in the manifest connivance with the rebels existing in two of the Venezuelan States. The proclamation sent to the ship amounted to a full confirmation of the above statement, notwithstanding the slight significance which is attributed by your excellency to this act of rebellion against the National Government.

Shortly afterwards the sloop *Santa Clara* arrived in the neighboring port of La Guaira, with the work of death wrought by this same pirate boat, and subsequently it was learned that the crew of the latter had sheltered the revolutionary refugees at Trinidad and Curaçao, as is general and notorious in said Antilles, with a view to conducting them secretly to the coast of Venezuela and there facilitating their disembarkation.

Although the British nation, from whose ports, according to your excellency's own report, the aggressive ship sailed, counts among its laws such adequate measures as that entitled "Foreign enlistment act of 1870," the Government has heard nothing of its purpose to bring to judgment and punishment those who contributed to its

armament. And if, as we are obliged to suppose, the Government of His Majesty does not uphold the conduct of the privateers and crew of the ship, it is to it to whom, primarily, seems to belong the promotion of justice in their consequent punishment. Neither maritime law nor any concrete principle or maxim of international law can protect a boat placed in such abnormal conditions, and as the Government of Venezuela has ordered that a part of the national fleet go in search of it and give it chase or destroy it, according to the necessities of natural defense, the President desires that your excellency be thoroughly acquainted with the recent acts confirmatory of the culpability of the ship, for the reason that subjects of His Majesty incorporated in its crew fall beneath the natural and just action of the hostilized country.

At the same time the Government wishes to solemnly protest against the unusual fact of there having been armed, equipped, and dispatched in British ports a ship directed to the injury of Venezuelan commerce, and to the disturbance, by means of piratical operations, of the tranquillity of the Republic.

The circumstance of the aggressive movement having been prepared in His Majesty's waters, while the British Government and that of Venezuela are cultivating relations distinguished for their cordiality, gives greater force and significance to said protest.

In order that your excellency may better understand some of the acts consummated by the pirate ship, I inclose herewith a certified copy of the depositions made in regard to the attack upon the sloop *Santa Clara*, depositions in which your excellency will find other circumstances which show the revolutionary character of the ship, in contradistinction to that of lawfulness, which, according to the reports of your legation, might be attributed to it.

Please accept, your excellency, new protestations and assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His British Majesty.*

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BRITISH LEGATION,  
*Caracas, January 11, 1902.*

MR. MINISTER: I should be much indebted to you if you would inform me definitely if the ship to which you allude in your notes of the 31st of last month and of the 7th of the present month under the name of *Barrigh* and *Libertador* is the same boat as the *Ban Righ*?

My reason for asking information on this point is that, though I had the honor in my note of the 3d instant of alluding to the dis-



crepancy in the names, in your note of the 7th you again speak, not of the *Ban Righ* but of the *Barrigh*, called at present *Libertador*.

Now, I know nothing of any boat of that name or of those names, except through allusions and accusations against it contained in the decree of the 30th of December and in your excellency's notes.

But if you will do me the honor to refer to my note of the 3d instant, you will see that I state officially that the *Ban Righ* carries the British flag and is provided with British papers.

This information reached me on the same date from the consul of His Majesty at Martinique, who said, just as I thought, that the *Ban Righ*, which carries the British flag and was provided with British papers, had sailed from Fort Royal on the 1st instant.

Consequently, it could scarcely be found unprovided with papers the 30th of December, date of the decree, as happened with the *Barrigh*, or *Libertador*, as it is there called. It could not, therefore, be a pirate on that date, nor even conform to the very unusual, not to say insufficient, definition given by the Venezuelan Government. Wherefore, if the report of the consul is exact, until the first of the year, or after, the *Ban Righ* was at Martinique with the British flag and British papers. Supposing, therefore, that the Venezuelan Government designated this boat by the name of *Barrigh*, I informed it as soon as possible that the assertion of the decree of the 30th, to the effect that on that date it was not provided with papers, was not exact.

Of its subsequent movements I know nothing.

If, in your excellency's supposition to the effect that "the British authorities or agents who had to do with the dispatch of the boat could not have proceeded with an exact knowledge of the facts," your excellency thought to express that there may have existed some irregularity as to the way in which the *Ban Righ* left England, I think that on this point your excellency may be at rest, since always when a boat is dispatched from English ports everything must be regular and orderly. Your excellency, moreover, may be perfectly sure that if it be proved that the boat is a pirate, not only in the opinion of the Venezuelan Government but in that of international law and of the Government of His Majesty, the last would be charged with the responsibility which your excellency says belongs to it, as the alternative of the fault of dispatching the boat, and that the piratical career of the boat would be cut short if it were to encounter one of His Majesty's ships.

Your excellency mentions that in raising the British flag it is committing acts contrary to international maritime law. If your excellency will submit to me proofs of this assertion I will transmit them to His Majesty's Government, who without doubt will investigate the subject without loss of time.

In the meantime, in order to assist the Venezuelan Government in the consideration of the question relative to the degree of responsibility actually incumbent upon the Government of His Majesty in this case, according to international law, I ask if Venezuela is at present at war with another nation, and if it is, if Great Britain has been made a base of military supplies by its opponent.

If the *Ban Righ* were unprovided with papers, as is erroneously stated in the decree, that would not constitute it a pirate occupied in "robbery or violent depredation on the sea, animo furandi;" a legal description cited to your excellency by my American colleague in his note of the 4th instant, as the legal definition of piracy. Mr. Bowen, in using this generally received definition of this "detestable and atrocious crime," and in arguments founded on it, seems to have proved that the United States at least is not among those countries which, as your excellency says, dissent from my opinion in regard to the character of that crime. I think that your excellency will find that the legations of the United States and England are not in any way singular in our opinions.

Your excellency may add that my opinion is averse to the jurisprudence of Venezuela. Of that I do not know, but you will pardon me if I observe that piracy is preeminently a crime which should be treated with reference to the precepts of international law, according to which the pirate is described as *hostis humani generis*—that is, essentially an enemy, not only of the Venezuelan people, nor of any one other country, nor even of any one part of such country; wherefore the jurisprudence of Venezuela would not come into account in any way in the consideration by other nations as to what might constitute an act of piracy, except so far as it may be in accord with the principles of international law.

With reference to your excellency's statement that the Venezuelan Government does not agree with my note of the 5th instant, consulting that document, I find it difficult to understand to which part of it you refer.

The object of the note was to state that I would defer, without loss of time to your excellency's request, directing me to inform His Majesty's Government that it was hoped that in the event of the arrival of the ship in the waters of Great Britain or its colonies it would be detained in accordance with the principles of international law, and to assure your excellency that the Venezuelan Government might be certain that that of His Majesty would operate in conformity with the precepts of British law and with those of international law. The Venezuelan Government can surely make no objection to that.

Should I understand, therefore, that this objection of the Venezuelan Government is applied to the parenthesis and that it maintains

in favor of the jurisprudence of Venezuela that a ship must be considered a pirate by other nations, simply because it desires that it be so considered, against all international law, and, as I have shown, even against the proved fact of the inexactitude of its own and singular assertion in support of its pretension—that of the lack of papers—or is it that the *Ban Righ* and the *Barrigh* are two distinct boats?

Your excellency goes on to cite a previous incident, and is good enough to inclose me the copy of a note from Lord Granville to Señor Rojas, dated the 6th of July, 1882, as applicable in the opinion of the Venezuelan Government to the present case.

But I find in that note, besides the identical assertion advanced against the *Barrigh* or *Libertador*, that the *Cantabro* or *Colon* was repeated since, and there is no allegation of there having been complained that the latter boat had committed various acts of piracy, and that Lord Granville in his note informed the Venezuelan minister that “in consequence of the reports sent to the metropolis by the agents of His Majesty, orders had been given” to the persons whom it concerned that “if it is encountered by any of His Majesty’s ships they are to give it chase in order to verify its papers and nationality,” not, observe this, that it be treated as a pirate, nor even that it be brought to port in order to be judged.

In the present case, however, as I previously demonstrated, the only definite charge made against the ship by the Venezuelan Government—that of being unprovided with papers—was evidently, at least at the time when it was made, inexact. That accusation has not been repeated since, and there is no allegation of there having been committed any piratical act, even from the Venezuelan point of view. There is, therefore, no initial analogy between the two cases. Moreover, your excellency will observe that the instructions to verify the papers and the nationality of the boat, if it be met, was sent out in consequence of the “reports of the agents of His Majesty relative to the movements of the boat,” and therefore not until, or until similar reports reach the Government of His Majesty in this matter—of which I am altogether ignorant—there is no similarity whatever between the two cases on this point, either.

Therefore, the analogy which your excellency may have wished to establish between the two cases falls to earth.

Your excellency says it is hoped by the Venezuelan Government that the opinion that the boat under consideration is a pirate—not only in the eyes of the Venezuelan Government but also in those of the Government of His Majesty—may be accepted, but it seems that the only ground for such an opinion is that it “is navigating in waters near the coast of Venezuela in an attitude hostile to the constitutional power (Venezuelan), manned by persons inimical to the

Government of Venezuela, and notoriously employed in revolutionary operations."

All this may serve to indicate that the boat under discussion may be engaged in fomenting a revolution, but what evidence of piracy is there in this? And yet your excellency desires and asks that the Government of His Majesty may treat as guilty of piracy a ship against which you could not yourself present not only any proof but not even any well-founded accusation of its being guilty of such a crime. I can, however, assure your excellency that if the *Ban Righ*—if it is an English ship or otherwise subject to our jurisdiction—commit any piratical crime whatsoever against international law, just measures will be taken in the case, and that, although on one hand the Government of His Majesty can do nothing contrary to international law nor interfere in any way in the internal affairs of Venezuela (which, to judge from opinions so often expressed by the Venezuelan Government on this point, is, I am convinced, the last thing that your excellency would desire), on the other, the Government of His Majesty could never countenance any illegality or crime against the principles of international law committed by British subjects against the Venezuelan Government in the same way that it could not fail to resent any illegal violence whatever committed against the subjects of the King.

I shall avail myself of the first opportunity to transmit the opinions of your excellency to my government, which will be pleased, no doubt, as your excellency requests, to aid in elucidating the antecedents of this delicate subject, and to exercise its good will toward Venezuela in this matter, according to, of course, and subject to the dictates of British and of international law.

I avail myself of the opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Señor Gen. J. R. PACHANO,  
*Minister of Foreign Affairs.*

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BRITISH LEGATION,  
*Caracas, January 17, 1902.*

MR. MINISTER: It is not the object of this note to answer that which your excellency did me the honor of addressing to me on the 14th instant, but to correct an erroneous assertion contained in the latter.

Your excellency alleges that I have advanced the assertion that this "hostile boat" was sent from the ports of Great Britain.

I regret that your excellency should have attributed to me in an official note assertions which I not only have not made but which would have been impossible for me to make, since the only knowledge

which I have on this subject is that which I get from the newspapers where I have seen, on the contrary, that the *Ben Righ* was equipped and subsequently dispatched, not in the port of London but in that of Antwerp.

If this is the case, "the solemn protest of the Venezuelan Government against the unusual fact of the equipping and dispatching from English ports of a ship with the purpose of injuring Venezuelan commerce and of disturbing, by piratical operations, the peace of the Republic, etc.," can in no way apply to the present case.

Your excellency seems to have confounded the fact of a boat's possessing English papers with its equipment and subsequent dispatch from English ports, two very different matters.

Nevertheless, even supposing that the boat should have been equipped and dispatched from an English port, I should not enter into the question of the unusual responsibility which, even though on the part of Venezuela no declaration of war has been made, nor have the parties engaged in the revolutionary contention been recognized as belligerents, the Venezuelan Government attributes to the Government of His Majesty, founded on the strength of an evidently erroneous allegation, as therefore, I have already informed your excellency I have done with your previous communications, I shall transmit this note without loss of time to the Government of His Majesty, which will give it the most careful consideration.

Therefore, I wish only to avail myself of the opportunity to inform you that until its instructions are received in the matter I do not propose to enter into any further correspondence on this subject; but in view of the circumstances contained in your excellency's note to which I reply, that you speak somewhat enigmatically of the fate which may befall British subjects in case they be incorporated in the crew if it is captured, I shall limit myself to again insisting that if the crew is captured and in it any British subjects are found they can not be treated as pirates.

I avail myself of this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Señor Gen. J. R. PACHANO,  
*Minister of Foreign Affairs.*

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VENEZUELA'S YELLOW BOOK, PAGES 249-256.

No. 115.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, January 25, 1902.*

MR. MINISTER: Your excellency begins your communication of the 11th instant, received in this office the 15th, with an expression of

doubtful opinion concerning the name of the ship lately declared a pirate by the Government of Venezuela, and even asks if the *Bar-righ* and *Libertador* are the same *Ban Righ* which recently sailed from Martinique carrying the English flag and provided with British papers. As your excellency charges himself to recall that in your communication of the 3d the discrepancy in the names was incidentally referred to, and bases the present inquiry on the circumstance of this department's having later designated the ship in the same way as in the decree of the 30th of December, it seems useless to confirm here that which my silence in respect to that rectification was and is clearly demonstrating.

Your excellency then proceeds to deduct that the ship referred to was not a pirate on the date of the decree, inasmuch as it sailed from Martinique on the 1st instant, according to the reports of the consul of His Majesty, still provided with British papers; but as such a deduction appears unacceptable—unless the ship be considered as a trader, to the exclusion of artillery, ammunition, and of the revolutionary people which it carries—it is necessary to withdraw from that inference in order to enter into the consideration of the facts conformable to the actual circumstances.

Maritime law, in whichever of its branches it treats (private, public, administrative, or international) has fixed rules from which it is not possible to depart without injury to the general interests of commerce and without declaring one's self in open rebellion against the laws of all civilized nations.

The papers of navigation, which constitute, as it were, the moral nature of each ship, give testimony of its legality or show, as the case may be, its vicious condition. If they have been issued for the exercise of a lawful traffic, and the ship which carries them afterwards brings confusion to an established country by collecting raw recruits for the purpose of landing them in deserted places, in carrying munitions of war from one point to another, and in boarding ships on the high sea, the use of these papers, however legitimate may be their origin, is equivalent to a transgression of extreme gravity, uniting fraud to the other acts committed.

The change of name is in itself alone a strong indication of culpability, especially if it occurs in papers issued by Great Britain, where, as in France, the prohibition of change of name is absolute. (Prad. Fod., sec 2, 287.) Such a change is not probable unless there be designs opposed to the general tranquillity of commerce. The attitude of the ship *Libertador* can not be considered legal by any nation, and least of all by Great Britain.

With regard to the manner in which the *Ban Righ* (*Libertador*) may have left England your excellency says that the Government can be entirely at rest, because, inasmuch as it sailed from English



ports, it presents conditions of regularity. Against that assertion, which the Republic can only accept for the present occasion with all possible reservation, your excellency states that if the ship is considered a pirate, not only in the opinion of Venezuela, but conformable to international law and according to the judgment of the British Government, the latter would accept the responsibility of the case; moreover, that its piratical course should be stopped if the boat were encountered by one of the ships of the British navy.

This last is exactly what Venezuela has asked, and as that legation already has proof of the acts of piracy committed by the ship the necessity of further solicitation or the presentation of other data for the usual procedure could not be understood. The same, in effect, occurred in 1882. Lord Granville accepted the opinion of Venezuela with regard to the *Cantabro* and dictated the required orders for its examination on the high seas and the verification of its papers. The difference which your excellency seems to find between that case and the present one rests on a basis or principle very easily removed. Your excellency says in the first place that the British orders were issued then in consequence of reports sent to the capital by agents of the Government of Her Majesty, and adds that they referred only to the examination of the papers and to the nationality of the ship. To this I will observe that if at the present time reports entirely analogous to those of 1882 have not been communicated to the capital it must be through the negligence of the British agents and not through the fault of Venezuela, and that if the orders of that time were not extended from the beginning to the capture and sentence of the *Cantabro* it must have been due to the gradation natural in every affair or circumstance of that kind, which commences always by verifying the facts in order to determine thereby the proper mode of procedure. A ship not accused of culpability is never detained nor its papers examined.

In order to ascertain the nature of the responsibility which may fall to the share of Great Britain in the matter, your excellency asks if Venezuela is actually at war with another nation, and, if so, if Great Britain has been made a center of supplies for the enemy. The question causes surprise, as your excellency well knows, through my communication of the 31st of last month, that the declaration of piracy was not made with respect to any ship of a foreign navy, but with relation to a boat given up to illegal forays in connivance with the disturbers of the internal peace of the Republic. But notwithstanding the surprise which it occasions, the question of your excellency gives rise to certain considerations into which I enter at once, in compliance with command of the President, in order to define with the concurrence of your excellency, a point which appears to present the gravest international interest.

According to the expression of your excellency, or to that which it suggests, the hostile attitude of a ship, in such conditions as the *Libertador* is found to be, would, during a state of war with another country, be a more serious matter and deserving of greater punishment than under the present circumstances. This, in my opinion, is new in the law of nations. The state of war between two countries produces the effect of belligerency, and with it the duties of neutrality, well understood and known. One of these duties consists in not permitting the departure of armaments or expeditions to aid any of the belligerents. England stretched this duty to such a point during the Franco-German war (1870-71) as to order the detention in the Thames of a boat—the *International*—which was carrying aboard the submarine cable with which France thought to connect Dunkirk with Cherbourg, Brest, and Bordeaux. The request or complaint of Count Bernstorff, ambassador of Prussia, was immediately heeded. Three hours after it was presented the vessel was detained. If such were the strict practice exercised on this point by reason of the contention between two countries who operate respectively from the firm seat of their own sovereignty, what must be the result to those who have no representation, neither national nor international, who wander through the seas without justifiable purpose, and are given up to revolutionary deeds against defenseless coasts? What privilege, what exemption, what prerogative can legalize such difference, to the point of leaving the pirate in superior conditions to a ship of the government and powers which proceed in their mutual hostilities according to the customs and laws of warfare? I would respectfully invite your excellency to explain this point so as not to leave established an opinion vague and interpretable in regard to so delicate a matter.

If the *Libertador* is to cross the seas, enter foreign ports, go aboard or destroy vessels, and make landings without regard to any of the restrictions which international law imposes in time of war, even on the naval ships of a belligerent power, one will be forced to conclude that in the interest of commerce and liberty of navigation a new danger has arisen, the more alarming inasmuch as it does not originate from the contention of two nations, but from the individual will of every one who wishes or is able to equip a ship of revolutionary character and perform hostilities with it against any organized country. The treatment due to piracy would be the only remedy for so great an offense. A ship under such conditions can be nothing but a pirate.

“Privateers,” says Masse, “are different from pirates in that they are authorized by their respective rulers to cruise the seas in time of war, while the pirates overrun the seas at all times without commission from any power. Privateering is a delegation of the right of war made by a sovereign to his subjects against the subjects of an

unfriendly nation, or one that is supposed to be so." (Droit commercial, Vol. I, sec. 154.) And now is the time to ask: What ruler has ventured to authorize the ship called the *Libertador* to receive munitions and carry them to the coast of Venezuela in a stealthy manner, or to collect in the Antilles, also in a secret manner, people destined to disturb in the territory of this Republic the usual industry and commerce? Which government has conferred on it the right to detain at sea, as it did with the sloop *Santa Clara*, vessels employed in peacefully transporting fruits or merchandise to Venezuelan ports?

Recourse to any treaty of extradition among those recently concluded by Great Britain would suffice to show that it includes deeds similar to those committed by the *Libertador* among the acts of piracy. One of the treaties, that arranged with the Argentine Republic the 22d of May, 1889, and ratified the 15th of December, 1893, scarcely eight years ago, in enumerating the transgressions which shall be the cause for extradition, says as follows:

"22. Piracy and other crimes or transgressions committed at sea on persons or things, and which, according to the respective laws of the two high contracting parties may be extradition offenses, punishable with a sentence of more than one year."

Without attempting to discern if the British law does or does not consider the deeds committed to the present time by the ship *Libertador* crimes for extradition, it would be sufficient, according to the understanding of that article, that the other party consider them as such in order to require of Great Britain the consequent procedure.

In the treaty of March 15, 1839, between Venezuela and the United Kingdom, entered into for the purpose of abolishing the slave traffic, the two nations agree (art. 4) to establish by additional convention the acts which should constitute piracy, including the traffic of slaves, and requiring, after said convention, the legislative power of both countries to enact laws for the punishment of said acts committed by the subjects or citizens of each. Now your excellency will see how the essential acts which constituted piracy were to be punished by each of the two countries, with regard to the subjects or citizens of the other. The understanding which prevailed in that treaty does not appear to be the same which now guides the legation.

With regard to your excellency's not understanding to which part of the communication of the 5th mine of the 7th made objection, I think it sufficient to refer to the very communication which I am now answering, which, in respect to the point mentioned, reads as follows:

"I must understand, therefore, that the objection of the Venezuelan Government is applied to the parenthesis."

If your excellency, yourself, found the explanation, it would seem

unnecessary to explain it, except to call attention to the fact that the jurisprudence invoked by Venezuela was admitted by an English statesman so well known as Lord Granville.

Here the response to the communication received the 15th might be ended, and the appreciation of the fact left to the Government of His Majesty, were it not that another communication from your excellency, that of the 17th, obliges me to consider a point in it which your excellency considers an error on my part. Your excellency bases the mistake which he there attributes to me upon the connection between an understanding of the communication of the legation, dated the 3d, and the protest presented through this department on the 14th, in consequence of the boat, declared a pirate, having sailed from the ports of Great Britain. A little reflection on the subject will explain the supposed error. In the communication of the 3d your excellency said he had official information that the vessel carried the English flag and was provided with British papers. Such were the words of your excellency, and now the question arises, What does the provision of English papers signify? Does it mean that the ship proceeds from ports foreign to the English authorities and that its patent of navigation, its roll, etc., may have been issued by a simple British deputy in some strange place? Such supposition is impossible. Your excellency knows what the said papers of a ship represent (*papiers de bord, lettres de mer*), and also knows that its patent of navigation can not be certified except by an officer authorized by the executive. (Calvo, sec. 429.) This officer, whatever his position, can only be within the territory from which the ship was originally dispatched. A vessel sailing thus from British ports may stand inshore at other points more or less near and complete in them its cargo without this exempting either him who equips it or the authorities interested in its dispatch from the responsibility attending the destiny or the irregular employment to which the ship may give itself. Wheresoever the ship may go, its papers will be the only proof of its legality. The relation between them and the conduct of the ship can not at any time whatever be interrupted or falsified without grave responsibility. If it were otherwise, the universal rule established for the recognition of vessels under certain conditions, by means of the examination of their papers at sea, would have no object.

If it were treating of a boat belonging to regular lines of navigation which on its return from any of its respective terminal points should take aboard arms destined to harm a friendly people, the conception of the responsibility would be different, but the simple putting in at Antwerp to take goods of one class or another is not an act which would change the original sailing point. In the protest of the Venezuelan Government no point was designated. It simply

spoke of the sailing from English ports. The citing of that of London, which your excellency now does, is a new subject, the explanation of which does not concern the Government of the Republic, but His Majesty's legation itself.

From the assertion made in your excellency's communication of the 3d one might presume that the boat had been constructed in the dominion of His Majesty's, and the owners of it, or some of them, were British subjects, and that the captain and at least three-fourths of the crew or mariners were of the same nationality. If on investigation the circumstances of the ship are found to be without precedent to the previous responsibility, there could be added that imposed ipso facto by article 7 of the treaty of 1825-1834, in which are established those conditions by which Venezuela may consider a ship as British. To the acts of piracy committed by the ship would be added another of such irregularity as the raising by her of the British flag without the intrinsic right which the case would require. So that among the investigations asked by Venezuela it is necessary to include those relative to the place of construction, to the person or persons who own the ship, to the nationality of its captain, and to that of three-fourths of the crew.

Even though your excellency declares there will be no more correspondence on the subject, the Government expects the categorical explanations to which it is entitled owing to the friendly relations which it entertains with that of His British Majesty, and proving, as it does, that the ship referred to has committed acts of hostility and piracy against the Government of Venezuela and its commerce, for which it has made use of the commission of that of His Majesty and the English flag.

Accept, your excellency, further protestations and assurances of my highest and most distinguished consideration.

J. B. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His British Majesty.*

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VENEZUELA'S "YELLOW BOOK," PAGES 257-286.

BRITISH LEGATION,  
*Caracas, January 24, 1902.*

MINISTER, SIR: As I had the honor to inform your excellency, verbally, this morning, I have received instructions from His Majesty's Government to inform you, relative to a conversation which I had with your excellency on the 21st instant and which I communicated to the Marquis of Lansdowne that the *Ban Righ* left England in November, and that the Colombian minister, who was in

London, having shown that the vessel was destined to the service of his Government, and that no war existed between Colombia and any other power, there was no reason whatever for detaining the ship.

I avail myself of this opportunity to reiterate to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,  
*Minister of Foreign Affairs.*

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No. 116.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, January 27, 1902.*

MINISTER, SIR: The note of the 25th, No. 115, has been already written when that of the 24th from your excellency was received confirming the information relative to the sailing of the *Ban Righ* (*Libertador*), in the month of November last, from English ports. As I was unable to acknowledge in mine the receipt of your letter by this office, I do so now, and at the same time I have the honor to reiterate to your excellency the assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,  
*Minister Resident of His Britannic Majesty.*

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BRITISH LEGATION,  
*Caracas, February 6, 1902.*

SIR: I have the honor to acknowledge your excellency's note of the 25th instant, relative to the *Ban Righ*. It is unnecessary for me to follow your excellency in the arguments of common law as applied to this case, as they have already been adduced by the minister of the United States in his note of the 17th ultimo, in which he fully explained to your excellency international law, as generally accepted by civilized countries, upon this subject.

As regards the responsibility of His Majesty's Government upon this subject there is nothing further to add to the note of the 24th ultimo, which, by order of His Majesty, I addressed to your excellency in view of the statement made by the Colombian minister that the *Ban Righ* was destined to the service of his Government, and that Colombia not being at war with any other power there was no reason to prevent the vessel from leaving England. The subsequent movements of the vessel is a matter which does not concern His Majesty's Government.



I avail myself of this opportunity to reiterate to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,  
*Minister of Foreign Affairs.*

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No. 206.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, February 12, 1902.*

MINISTER, SIR: The Venezuelan Government, in considering the note of the 6th in reply to a letter of the 25th of January last, addressed by this office to His Majesty's legation, finds it strange that your excellency refers to the opinions and decisions of another public minister in regard to the general case of the *Ban Righ*, as it does not seem that such can offer the slightest relation to the affair referred directly to your excellency, because, according to information received from your excellency, the vessel had sailed from ports of the United Kingdom under the English flag and provided with British documents. As regards the applicability of the doctrine of international law to the case, the executive believes that it can only be cited on the point sustained by Venezuela in this correspondence, while it offers no opportunity for denial on the part of the legation.

Your excellency says that the free exit of the *Ban Righ* from British ports was due to official information communicated to the Government of His Majesty by the Colombian legation in London, that the vessel was destined to the service of the Government of that Republic. It appears that, in the opinion of your excellency, such act absolves Great Britain from all responsibility; but in regard to this it might be asked whether or not the fact of a steamer which leaves English ports with war materials for another country, changing her name before arriving at her destination, and which opens hostilities against the government and commerce of another nation friendly to Great Britain, using the supplies which she has aboard, constitutes a violation of the laws of the United Kingdom. In the opinion of the Venezuelan Government there would have been no grievance if it was a case of the simple shipment of a supply of arms and ammunition which arrived, without change, at their destination; but as the vessel, instead of following out her itinerary, changed her status on arriving in these waters, and commenced acts of hostility against a nation friendly to that from which she came, that responsibility, far from diminishing by her departure, was increased, and far from lessening the gravity of its character, it is substantiated by the preceding circumstances. The violation of British law is manifested by the mere change of name (*Libertador*), and the trans-

gression of international law is obvious by the use of a flag during acts of hostility against a nation friendly to that to which she belonged. Therefore, in compliance with the express commands emanating from the President of the Republic, as passed by the council of ministers, the protest of the 14th of the past month is hereby reiterated, and your excellency is informed that the Venezuelan Government will continue under the unfavorable impression, naturally produced by the omission of a debt of amity on the part of Great Britain, until some conclusion is had pursuant to an act so serious and unusual.

Your excellency will please accept the renewed assurances of my highest consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His Britannic Majesty.*

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BRITISH LEGATION,  
*Caracas, February 14, 1902.*

MINISTER, SIR: I have the honor to acknowledge receipt of a new note, dated 12th instant, relative to the ship called *Ban Righ*, or *Libertador*.

I avail myself of this opportunity to reiterate to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.  
*Minister of Foreign Affairs.*  
*Minister of Foreign Affairs.*

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BRITISH LEGATION,  
*Caracas, February 14, 1902.*

MR. MINISTER: As the subject of your excellency's note of the 7th instant and of previous correspondence is a "decided matter," I limit my note of this morning to expressing the honor of acknowledging the receipt of the former, which I will transmit to His Majesty's Government as soon as possible. Nevertheless, I think it proper to call the attention of your excellency to a statement made in that note by which it would appear that you desire to signify that the *Libertador* had committed acts of hostility against Venezuela by carrying the English flag.

The only specific "act of hostility" charged by the Venezuelan Government before His Majesty's legation referred to the collision with the *Santa Clara*, and in the official statements, upon which your excellency bases the so-called act of piracy, and which your excellency

forwarded to me in regard to this matter, I observe that the whole crew of the *Santa Clara* alleges that the *Libertador* did not carry a flag during the occurrence, but that afterwards it "raised a white flag with a blue ball in the center." It is clear, therefore (according to the testimony upon which your excellency's charge is based), that no English flag was raised during the incident nor after it occurred.

Your excellency's letters have been so courteous that I am unable to suppose that had you been in a position to mention any other occasion upon which the *Ban Righ* or *Libertador* carried a British flag while committing what the Venezuelan Government could have, in anyway, considered and represented as an act of hostility against Venezuela, you would have called my attention to the same.

I would not consider it worth while to refer to this statement if, in your previous note of the 25th of January, you had not said that I alleged in mine of the 11th of this month, that the *Ban Righ* had sailed from Martinique still carrying the English flag and provided with English papers, when what I said in that note was as follows: "Therefore, if the statement of the consul is correct, up to the first of the year, or after that date, the *Ban Righ* was in Martinique carrying the British flag and had British papers \* \* \* of her subsequent movements I know nothing."

In my note of the 17th ultimo I had occasion to call the attention of your excellency to an error contained in yours of the 14th ultimo relative to the wording of my note of the 11th; and now that the aforesaid errors are being referred to, I will also call your excellency's attention to another error contained in your note of the 25th ultimo, in which you say that I said "I must, therefore, understand that the objection of the Venezuelan Government applies to the parenthesis."

Now, then, what I did say, was: "Shall I understand, etc.?" which is asking a direct question instead of making the assertion attributed to me by your excellency. I can not understand how this error could have occurred, for it only needs a very rudimentary knowledge of the English language to comprehend the difference between the assertion "I am" and the question "am I?"—(Debo He y Debo yo? Must I? Am I?).

I take the liberty of hoping that these frequent wrong quotations may not be made even by mistake, and that no arguments, protests, or anything else, susceptible of disturbing the propriety, if not the harmony of the diplomatic correspondence, may be based upon them.

I avail myself of this opportunity to reiterate to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,

*Minister of Foreign Affairs.*

No. 288.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, February 28, 1902.*

MR. MINISTER, SIR: Your excellency's note of the 14th convinces the Government that all discussion, moral and legal, relative to the matter of the *Ban Righ* (*Libertador*), would be inefficacious and without result, since your excellency seems determined to establish, between your own judgment and the acts charged by the Republic, a connection obviously contrary to that which might be suggested or advised by the cordial friendly relations existing between England and Venezuela.

Here is the condition of affairs:

About the close of last year there sailed from waters of the United Kingdom a vessel, carrying the English flag and British papers, from which a person, said to be chief of a certain revolutionary movement, declared himself in rebellion against the Venezuelan Government. The vessel being declared piratical by the national Government against which she had prepared to commit acts contrary to maritime international law, your excellency endeavored, in conference with me, to relieve her from the charge, and went so far as to say in one of your notes, that of January 3, that at that time you had warned the "Venezuelan Government in the most friendly, but at the same time most serious manner, to avoid any infraction of international law in regard to British lives and property in case of the capture of the *Ban Righ*." At the same time you declared that your Government had approved the language of your excellency in the conversation with me to which I have just referred.

Vain were the proofs which the Government presented of the obvious violation of the very British laws by the insurgent vessel; vain were its endeavors to have the same course pursued which England and herself had taken on former occasions; vain were the requests and protests presented by the Government in the name of the injured country.

As the only explanation which your excellency made in a note of January 24, after the vessel had committed depredatory acts and secretly disembarked on the shores of the Republic armed expeditions for the purpose of inciting the war in the interior, was that the vessel sailed from English ports for the Government of Colombia. The presentation of this fact lent greater seriousness to the incident; the guilt of the ship was increased. The responsibility of the crew before the very British laws was rendered greater, and, nevertheless, your excellency, in your note of the 6th instant, in order to shift the burden from the authorities of the United Kingdom, limited yourself to saying: "That the movements of the vessel subsequent to her de-

parture was not a matter of interest to the Government of His Majesty."

Without having changed her papers, which she could not do, and with successive change of flag, name, and course, the steamer *Ban Righ* (*Libertador*) continued her acts of depredation in the waters and on the coast of Venezuela. The so-called chief of the rebellion continued aboard, issuing proclamation of war and revolutionary communications, in one of which, published in the *El Imparcial* of Curacao and in other newspapers of the island, he spoke of the complete destruction of a Venezuelan vessel called *Crespon* by the guns of the rebel steamer. To this act might be added, as a fresh proof of the guilt of the *Ban Righ*, the fact of bombarding Cumarebo and causing great damage to the town.

Among the credible proofs held by the Government of the hostility exercised against the Republic by the vessel which sailed from British ports under an English flag are the autograph letters written on the vessel by the rebel chief; letters intended to incite and promote sedition in the interior of the Republic in simultaneous or combined action with the pirate vessel. The state of things produced by the presence of the *Ban Righ* in Venezuelan waters can not fail to affect in a very sensitive manner the responsibility of those who placed the ship in position to reach the center of her insurrectionary operations without obstacle. To deny such responsibility, which proves itself, is, up to a certain point, equal to not recognizing the Government which invokes the power to judge of matters injurious to it with the freedom consequent upon the possession of a perfectly defined right.

The President does not, therefore, think that such a condition should exist and still less can he accept the opinion of your excellency that the matter has been already decided (*chose jugée*).

In virtue of which he has ordered me to state most respectfully to your excellency that he awaits the result of his requests in regard to the *Ban Righ*, so as to be able, free from all annoying impressions, to continue the consideration with your excellency, upon bases of mutual cordiality, the other subjects of reciprocal interest to the Venezuelan Government and the legation of Great Britain.

Your excellency will please accept the renewed protestations and assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,  
*Minister Resident of His Britannic Majesty.*

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BRITISH LEGATION,  
*Caracas, March 3, 1902.*

MR. MINISTER: I have the honor to acknowledge the receipt of the note of the 28th ultimo, from your excellency relative to the *Ban Righ*

or *Libertador*, and to inform you that, as in the case of all your previous communications upon the subject, I will take great pleasure in forwarding the same by the first mail for the consideration of His Majesty's Government.

I avail myself of this opportunity to reiterate to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,  
*Minister of Foreign Relations.*

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BRITISH LEGATION,  
*Caracas, February 25, 1902.*

MR. MINISTER: His Majesty's Government having learned that the authorities of the Venezuelan Government have, arbitrarily taken possession of the control and equipment of the Bolivar railroad and that, at the risk of their lives, English subjects, in the service of the company, have been obliged by the authorities to render service for military purposes, I am commissioned to inform the Venezuelan Government that His Majesty's Government reserves to itself in the fullest measure all its rights in British interests and in the British subjects connected with said railroad. At the same time I must inform your excellency that it is possible that later a formal statement upon this subject will be made by His Majesty's Government to the Government of Venezuela.

I avail myself of this opportunity to reiterate to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,  
*Minister of Foreign Affairs.*

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No. 338.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, March 8, 1902.*

SIR: I read to the President of the Republic your excellency's communication of the 25th ultimo, relative to a complaint instituted by the Boliver Railroad plant, and I received instructions from the Chief Magistrate to inform your excellency that as in the conclusion of the note of the 28th of the same month, No. 288, he had said that he awaited the result of his requests in regard to the *Ban Righ* in order to be able, without any annoying impressions, to consider, upon bases of mutual cordialty, subjects which are of reciprocal interest to the Venezuelan Government and to the legation of His Britannic Majesty,



it is impossible for the Executive power to undertake this matter or to proceed to its investigation during the existence of that other incident which daily becomes more serious by reason of the notorious damages which the insurgent vessel continues to inflict on the Republic and its commerce; this very day, after the damage done to the steamer *General Crespo*, on the coast of Cumarebo, the vessel was found near to the island of Trinidad attacking the coast of Guiria and the vicinity.

The situation caused by the dispatch of that vessel is plainly contrary to the spirit of true friendship and strains the existing relations between the Republic and the United Kingdom, hence the Government of Venezuela is unable, while this condition exists, to treat with propriety the other questions which your excellency submits to its consideration.

Your excellency will please accept the renewed protestations and assurances of my highest and most distinguished esteem.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD.

*His Britannic Majesty's Resident Minister.*

No. 363.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, March 13, 1902.*

SIR: To the proofs accumulated by the Government, which are daily augmented, relative to the damages sustained by the Republic from the dispatch of the *Ban Righ* from English ports, the President has decided to add proofs of the indifference manifested by the authorities of Trinidad in respect to the acts of said steamer, and the still graver charge of toleration with which they saw preparations being made in the island for armed expeditions and the public departure of the same against the Venezuelan States which are near to the colony. Your excellency will not have forgotten the earnest appeal made to the legation a short time ago to prevent the island of Trinidad from serving as a center for plans against the public peace of Venezuela and, although there was not obtained from your excellency, nor from the new governor of the colony, all the good will which might have been expected, in accordance with international law, and which had just been voluntarily shown by another British officer (the governor of Grenada), the Government could never have supposed that the indifference to the tranquillity of a friendly country would have reached such a height in the minds of His Majesty's agents as to attract the attention of the very inhabitants of the antillian trinity and constitute a theme of reproach in the local press of that place.

Without considering any other proofs than those which it directly possesses, the Government of the Republic finds that a vessel, proceeding from England, arrived in these waters under the British flag with materials of war, and that for more than two months it has been a constant damage to Venezuelan commerce; and that after it had destroyed national vessels and discharged cannon on open and unprotected places, it received and openly shipped from the territory of that island, or, what is the same thing, from one of His Majesty's dominions, supplies of men and arms for the continuation of its work of destruction. Such a state of things is abnormal as obviously opposed to a condition of friendly relations which Venezuela cultivates with Great Britain.

As the simple application of certain laws of the Kingdom seems sufficient to prevent these damages, as well as those which relate to the acts of the steamer in her expeditions from Trinidad, the Government, taking this view and seeing that this incident has resulted in an ominous neglect of the most elementary duties of good friendship, reserves the right to claim compensation for the damages done to the national interests through said omission.

At the same time the proposal heretofore made to defer the consideration of all reciprocal matters of importance to both countries until a situation so irregular, from the point of public law, and so contrary, above all, to the cordial spirit which governs the relations of Venezuela with the Kingdom of Great Britain, is hereby reiterated.

Your excellency will please accept the renewed assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His Britannic Majesty.*

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BRITISH LEGATION,  
*Caracas, March 14, 1902.*

SIR: I have the honor to acknowledge the receipt of your excellency's notes of the 8th and 13th instant, relative to the affair of the *Ban Righ* or *Libertador*, and to say that I will avail myself of the first opportunity to forward them for the consideration of His Majesty's Government.

I avail myself of this opportunity to reiterate to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,  
*Minister of Foreign Affairs.*

No. 409.]

UNITED STATES OF VENEZUELA,  
DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, March 24, 1902.*

SIR: I have just learned that the insurgent steamer *Ban Righ* (*Libertador*) has anchored at the Port of Spain without any opposition or difficulty whatever on the part of the colonial authorities. Venezuela protested at the time to the honorable legation against the acts of hostility committed against the Government by the said vessel on the coast of the Republic, to the detriment of general security. Later it protested against the attitude of indifference or toleration assumed by the governor of Trinidad in the presence of revolutionary movements openly prepared in the territory of the island against the constitutionally established authorities of the Estados del Oriente. Herewith, in conformity with a special charge from the constitutional President of the Republic, I present in this note, with all the energy demanded by the case, a new protest against the unusual act of the colonial authorities, who, after the proceedings had before this respectable legation, harbored said steamer without taking into consideration, to judge from the development of affairs, the aforesaid proceedings.

With the earnest request that you will please take cognizance of this new protest from the Government of the Republic, and of the grave circumstances which occasion it, I offer to your excellency new assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,  
*Minister Resident of His Britannic Majesty.*

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BRITISH LEGATION,  
*Caracas, March 25, 1902.*

SIR: I have the honor to acknowledge the receipt of your excellency's note, dated yesterday, in which protest is made against the presence in Port of Spain of the insurgent steamer *Ban Righ* (*Libertador*), without any objection being made on the part of the colonial authorities.

I communicated this matter to H. M. Government without delay. I avail myself of this opportunity to reiterate to your excellency the assurances of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,  
*Minister of Foreign Affairs.*

BRITISH LEGATION,

*Caracas, March 25, 1902.*

SIR: In reference to your excellency's note, dated yesterday, I have the honor to inform the Venezuelan Government that the governor of Trinidad has informed me that on the 23d instant the Colombian war ship *Bolívar* arrived at Port of Spain before the *Ban Righ*.

I avail myself of this opportunity to reiterate to your excellency the assurance of my highest esteem.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,

*Minister of Foreign Affairs.*

BRITISH LEGATION,

*Caracas, March 20, 1902.*

SIR: In the note from your excellency of the 13th instant, you spoke of the "toleration with which the governor of Trinidad had witnessed the preparations for armed expeditions in the island and the public and notorious departure of the same to operate against the peace of the Venezuelan States which are near to the colony."

I observe, also, that your excellency speaks, in your note of the 24th instant, of having protested against the "indifference or toleration shown by the governor of Trinidad toward the revolutionary movements notoriously prepared on the island to operate against the constitutionally established authorities of the Estados Orientales."

The only testimony presented by your excellency in support of these general but serious charges, is that of some communication contained in the local press. Unfortunately the liberty of the press is no guaranty of its correctness, as this case has proved, and it will be as satisfactory to the Venezuelan Government to know, as it is to me to communicate to it, that I have received from his excellency the governor of Trinidad a dispatch in which he informs me that there does not appear to be any foundation whatever for the statements made in the local press to which, apparently, your excellency alludes.

It also seems from the reports transmitted to this office that the police had received instructions to keep a watch upon all places frequented by Venezuelans, and to report to his excellency, who has been on the alert, and that the revenue police also patrol between 6 p. m. and 6 a. m., and that so far as they know no armed party has left Trinidad for Venezuela or for any other place.

His excellency also informs me that he has received no communication whatever from the Venezuelan consul upon the subject.

I avail myself of the opportunity to reiterate to your excellency the assurance of my highest esteem.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,  
*Minister of Foreign Affairs.*

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BRITISH LEGATION,  
*Caracas, March 27, 1902.*

SIR: In my note of the 24th instant I had the honor to inform your excellency that I had communicated without delay to His Majesty's Government the protest of the Venezuelan Government to the presence in Port of Spain of the insurgent steamer *Ban Righ (Liberador)* without any objection having been made by the colonial authorities.

I am now instructed by His Majesty's Government to inform that of Venezuela that as it now appears the said vessel is at present, at least ostensibly, a Colombian warship, carrying the Colombian national flag, he can not, with propriety, order any proceedings whatever against her.

Such procedure would constitute an act of war against Colombia if the vessel is a Colombian public vessel.

It is my duty to state that His Majesty's Government is not responsible for any act of depredation committed by the said vessel. Besides, the circumstances under which she was allowed to sail from England are of such a nature that the Venezuelan Government can not, properly, bring any charges of neglect whatever.

If, since her cruise to Martinique, she has made use of the British flag it has been simply an unjustifiable act, for which the Government of His Majesty is in no way responsible.

On the other hand, His Majesty's Government would not allow the vessel to make use of any British port as a base of hostile operations against Venezuela, and the governor of Trinidad has been so instructed; that he will not permit her to coal, and has requested her to leave the port at once.

I avail myself of this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,  
*Minister of Foreign Affairs.*

No. 416.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, March 29, 1902.*

SIR: On the 25th instant your excellency notified this office that you had received notice from the governor of Trinidad of the arrival, in Port of Spain, of the ship *Ban Righ* as a Colombian war ship by the name of *Bolivar*. On the 27th your excellency addressed to me another note upon the same subject; but, in order to take the matter under consideration, it is necessary for the Venezuelan Government to know under what process and from what date the aforesaid English ship entered the Colombian navy.

I most earnestly beg that your excellency will promptly furnish this information, and, meantime, I have the honor to offer the renewed professions of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His Britannic Majesty.*

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BRITISH LEGATION,  
*Caracas, March 31, 1902.*

SIR: In your excellency's note of the 29th instant, you ask by what process and since what date the vessel, alluded to in your note, entered the Colombian service.

In my note of March 27th I stated that "I had been instructed by His Majesty's Government to inform the Venezuelan Government that said vessel now appears, ostensibly at least, to be a Colombian war ship."

I have the honor to inform your excellency that I have no further information upon the subject than that which has been communicated to the Venezuelan Government.

I avail myself of this opportunity to reiterate to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,  
*Minister of Foreign Affairs.*

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No. 450.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, April 5, 1902.*

SIR: Since the statement made by you on January 3 last, in your own and in the name of your Government, that the vessel (carrying an English flag and provided with British papers) declared by



Venezuela to be outside of international maritime law, up to the receipt of your note of March 27th, in which, in accordance with instructions also emanating from London, you stated that the said vessel was a Colombian war ship, against which it was impossible for Great Britain to adopt any proceedings whatever, the agents of the Kingdom had shown so little interest in appreciating the justice of Venezuela's rights, and such a tendency to shirk the responsibility, natural in similar circumstances, as almost to raise the presumption of the preexistence of a judgment not altogether impartial, and entailing consequences of a grave and painful nature, affecting the mutual duties of nations. In order to prove this irregularity it is sufficient to refer to the correspondence with your legation during the three last months.

The note of the 3d of January, referred to, was followed by one of the 5th, in which your excellency gave assurance that your Government would proceed in the matter in accordance with the regulations of British and international law. In the reply made by this office to both communications there was expressed the natural surprise produced by the fact of finding an English vessel engaged in hostile operations against the Republic, to which was added a written proof that in 1882 His Majesty's Government, through Lord Granville, had assented to the course pursued by Venezuela under exactly similar circumstances to those which have just occasioned the decree relative to the *Ban Righ*, or *Libertador*. The damages done by the aforesaid British vessel caused the Government, on the 14th of January last, to make its first protest against the unusual fact of a vessel sailing from English waters for the purpose of injuring the Republic; at the time that the protest was made proofs were sent to the legation of an attack made by the vessel on a Venezuelan sloop with other proofs of irregularity of her change of name and flag.

In the note prior to that from this department, which was received too late, your legation had endeavored to explain the condition, ante-judicial, under which the *Ban Righ* openly sailed, and even proofs were requested, in order to transmit them to your Government, to show that the vessel was committing acts contrary to international maritime law. In referring afterwards to the protest made by Venezuela, your excellency denied, in a note of the 17th, that you had said that the vessel had been dispatched from English ports; that her possession of British flag and papers, and her equipment and dispatch were in your opinion two different things. To that note and to the previous one this department replied on the 25th, confirming all its assertions, fully sustained by the doctrine of international law upon the subject; in one respect this affirmation was unnecessary, as your excellency had already stated that the vessel had left England last November, bound for the Colombian Government. On February

6 your excellency reiterated said information and added that the acts of the *Ban Righ* subsequent to her leaving British waters did not concern His Majesty's Government.

In the reply made to your excellency on the 12th all the preceding circumstances were recapitulated (the sailing of the vessel under an English flag and with British papers, the illegal change of name and destination, the hostilities in which she is engaged against a nation friendly to Great Britain, and other no less serious acts), in order to reiterate the protest of the 14th of January and to put in evidence the unpleasant impression which the attitude assumed by Great Britain had made on the Venezuelan Government. Your excellency replied by a simple acknowledgment, without even announcing the transmittal of the communication to the Government of His Majesty; afterwards, in a note of the 14th, after some explanations relative to the literal meaning of one of your phrases, which you considered badly translated, you took for granted the judgment (*chose jugée*) of the case under investigation, and called attention to the fact that the vessel had raised an unknown and not a British flag, after boarding the Venezuelan sloop, which you found to be the only definite act of hostility of which the vessel had been accused.

Another recapitulation had to be made to the legation on February 28, without omitting, among the acts of the *Ban Righ*, her secret shipment of armed expeditions for the purpose of inflaming the war in the interior of the Republic. And as at this time your excellency had, in a tone almost threatening, made complaint of the alleged use of a certain railroad, belonging to an English company, for the mobilization of military equipments, the President, in a note of March 8, at once declared a suspension or delay in the consideration of all matters of mutual concern to both governments, while the unusual situation created by the dispatch of the *Ban Righ* and the hostile acts of the said vessel continued to exist, although the situation was so serious the British Government had only lent it a very lukewarm or meager interest. The subsequent conduct of the authorities of Trinidad, so propitious to the operations of the vessels as well as to the plans in which she became the principal factor or medium, obliged the Government to make new protests, only answered finally in the ambiguous form which appears in your excellency's note of the 27th of last March.

Very little thought is needed upon the foregoing recapitulation in order to deduce the vacillation or lukewarmness with which the British Government and its representatives conducted this delicate matter, which might almost be interpreted in a spirit contrary to friendly obligations and the rights of the State as maintained by Venezuela, while it can not for a moment be credited that the English authorities did not recognize the vulnerable motives of the *Ban Righ*

as she sailed from the waters of the United Kingdom and took aboard materials of war.

The nationality of a vessel is estimated and defined according to the circumstances to which she is subjected and the proofs which the vessel is obliged to present. The ships of the State is one case and those belonging to individuals only engaged in commerce another. In speaking of this subject relative to British legislation, Cabro (sec. 393) mentions that the owner of an English vessel must be a subject of the United Kingdom by birth or naturalization or must have secured special authority and done homage to the Crown. The person who acquires ownership of the vessel is obliged to make declarations similar to those exacted from the first owner.

All vessels must have a name, which, according to all writers, is the best way of designating her, following her, and engaging her under certain conditions. Once she has been named no change is admissible. Pradier Fodere, in making the foregoing statement, explains that in England and in France any change of name is absolutely prohibited. (2287.) This is not the case in Austria-Hungary, nor in Norway, where there are exceptions to the rule. According to Venezuelan law, if the owner of a vessel decides to change her name he must take out a license just the same as when the shape of the vessel is changed, with the difference that in the latter case new measurements, new certificates, and new securities are required.

The British Government might follow two opinions in judging the case of the *Ban Righ* as a vessel sailing from its ports—the opinion of domestic law and that of international law. According to the former the sudden change of name was sufficient to render the condition of the vessel illegal; under the latter enough reason might have been found in the attitude assumed by the steamer on her arrival in these waters to render her liable to pursuit and capture for violation of the principles of maritime law to the observance and compliance of which all nations are obliged.

According to Ortolan (Teodoro), the sea is a theater so vast and difficult to subject to supervision or place under a sufficient number of police to guarantee life, property, and common rights, that it is not too much to demand, in order to obtain such security, that each vessel should be under some special nation. Such nation might be more or less barbarous or civilized, more or less a stranger to international relations and the cultivation of the same; but if they do not follow common and human law, they must be made to follow some law. And if the nation to which the vessel belongs or is connected is an organized State, knowing and practicing the rights of man, its authority and the guaranty of its public officers constitute elements of security, and therefore the vessel is placed under the rights of man, according

to the regulations observed by the State to which she belongs. (Book II, Chap. IX.)

If the *Ban Righ* opened hostilities against Venezuela while carrying the British flag the duty of England seems to be well defined by the circumstances of the act and the time of its accomplishment. If later she raised a flag unknown to anyone she violated international law and the consequent punishment. The vessel being consigned to Colombia did not relieve Great Britain from subsequent responsibility, unless the possibility is admitted of one country arming a vessel with her own flag and license for the military service of another Government, without requiring any explanations as to her ultimate operations against a nation in friendship with that which had equipped the vessel for sailing. Had the *Ban Righ* sailed from English waters under the official name and flag of Colombia, as the vessels which Balmaceda's government bought sailed under the flag and name of Chile in 1891, and endeavored to impede the representatives of the junta of Iquique, there might be, perhaps, some opportunity for argument; but as the steamer was provided with the papers and flag of Great Britain, the responsibility of the government that fitted her out officially for her voyage must obtain as to the vessel, especially if, through her illegal change of flag and name, there resulted serious damages to another State, or evident violations of the provisions of public law. The change of route and of destination constituted another proof of culpability.

To use the flag of a foreign country without its authority to do so is, and has always been held by the rights of man to be, a fraudulent act, deserving of punishment as well by the country whose flag has been used as by any other country. In the case of the *Ban Righ* there would have been no criminal in such crime until after her arrival at Port Amberes or at Fort de France, as the action of the British Government was equally provided for and defined. If the vessel now carries the Colombian flag, Great Britain might be able to explain how it passed into the possession of another country, causing, from the time of its arrival in the Antilles, such serious and extraordinary damages to Venezuela.

The colony of Trinidad has contributed to augment this situation by the easy manner in which vessels destined to supply the insurgent ship enter and leave the port, as was done by the schooner *Aguila de Oro* and by the departure from the island of armed expeditions for the eastern coast of the Republic.

Although these expeditions ferment a perturbing nucleus and are recognized by the colonial authority as belligerent rights, against all valid antecedents and to the discredit of the most rudimentary principles of the rights of man, it must still be supposed that in their toleration the magistrates of Trinidad completely forgot the regula-

tions upon which neutrality is founded and the evident violation of legislation passed by Great Britain upon this question.

In 1877 the foreign enlistment of 1870 was as now in force. It was an extension and modification of the act of 1819. The British Government, on opening the Russo-Turkish war (Crimean), nevertheless believed it her duty to publish a new act (London Gazette, April 30) to expressly prevent the enlistment of soldiers in her territory and to prohibit the use of her waters as a base for warlike operations. Later, during the war in Tonkin, the cabinet of St. James declared coal contraband of war, and yet that precedent has not been used by the neighboring colony, who allows coal to be supplied to a vessel which, far from being belligerent, has been declared beyond the terms of international law by the government of a nation friendly to England.

The famous Bluntschli says that vessels armed as corsairs to destroy the ships of foreign nations devastate the coasts of the State to which they belong, and enter the country by fire and bloodshed, not so much with the intention of making an advantageous expedition, but to satisfy their spite and vengeance (sec. 343), must also be considered pirates.

The destruction of the ship *Crespo* and the bombardment of Cumarebo, of Guiria, of Carupano, of Juan Griego, of Porlamar, and of other ports of the Republic, might have served the British authorities sufficiently to have confirmed the official opinion of the Venezuelan Government for them to have acted in accordance therewith.

In your note of the 27th of March your excellency stated that on the occasion of the vessel having anchored in Port of Spain, she was, ostensibly at least, a Colombian warship, and that any proceedings against her would constitute a bellicose act against Colombia. Your excellency limited your reply of the 31st to the reproduction of the ostensible condition to the great surprise of the Government, as the real condition of the vessel could not be unknown to the British authorities, as none is in a better position than the Government of His Majesty to know whether the English vessel, dispatched from his ports by his employees in the branch of the commercial, marine, or navy department really transferred to a foreign navy and how it was done. And as your excellency added that you had given orders not to permit the steamer to coal in Port of Spain nor to remain there, it may be asked if Colombia, as is well known, is not at war with any nation, and the ships legally belonging to her navy may, therefore, have access to all ports of supply, against whom is the order directed?

If not against Colombia, why then argue of the difficulty in proceeding against a steamer evidently under illegal conditions? In order to measure the legal extent and international significance of



the first statement in the note of the 27th, it would be necessary to determine the circumstances of the second.

Still further: It is well known that the said steamer committed, during the early part of March, piratical acts in English waters against a merchant vessel dispatched from Trinidad to Ciudad Bolivar. One of the principal newspapers of the colony called the attention of the governor to this matter, although the vessel was only able to continue her voyage after a delay of from eight to ten hours through orders from the chief of the rebels, a circumstance which might be considered mortifying to a grave and circumspect colonial authority said to be friendly to Venezuela.

The reciprocity regulations established by England and the United States, in article 6, of the treaty of Washington, in 1871, make it obligatory to employ all measures to prevent, in the ports, the equipment and armament of any vessel which might be thought destined to hostile operations against a friendly power, and to employ the same measures to prevent the sailing of any vessel called to take part in said operations, if they had been prepared wholly or in part for war purposes within the respective jurisdiction. The essential idea of said regulations was published by the Institute of International Law in the session at The Hague (1875), and there is hardly a nation that fails to observe these regulations as worthy of general respect and universal application.

The United States offers, on its part, in section 5283, Revised Statutes, the regulation that any person within the territory who equips or arms or attempts to equip and arm any vessel destined for hostilities against a foreign prince or state, or against any colony, district or city with which the United States is at peace, will be considered guilty and punished by fine or imprisonment as shall be determined.

Viewed impartially by a calm mind, whether intrinsically or outwardly, the public acts of the *Ban Righ*, which have occurred from the time of her clearance to her recent arrival in Port of Spain, as well as the facilities in Trinidad, upon which the insurgent Venezuelans counted for carrying out their plans and operations, must point to two circumstances, the most serious and extraordinary being that Great Britain bases her opinion of her irresponsibility upon the assertions of the official minister of a third State, and the Government of His Majesty, or his representatives, holding a mere revolutionary nucleus, without headquarters or flag, in a superior condition to that of a nation recognized as belligerent. The first is a detriment to international harmony, for nothing would be easier than to charter war vessels in any country to disturb the seas under the pretext that they were destined to the military service of a constitutional government. The second is equal, in a certain way, to



legalizing the action of any band sworn to attack the institutions of a country and the authority representing them. These two circumstances have engendered, upon this occasion, great injury to the Republic of Venezuela, the effects of which have extended to the commerce and industries in all spheres of public wealth and private property. It is sufficient to mention the loss of one of the best vessels of the national navy, the destruction of buildings, both private and municipal, in unfortified ports by the *Ban Righ*, the money expended in the mobilization of the troops to garrison the places attacked and to repel the insurgents, the present instability of the Government funds and consequent depreciation of public bonds, the loss of the crops, the destruction of fruit trees, and the cumulation of resulting difficulties which have overwhelmed Venezuela from the sailing of the vessel from British ports with papers from the United Kingdom and an English flag to her arrival in these waters, in unsettled condition, when she found a center of supplies and military resources in one of His Majesty's colonies near to the Republic.

It is proper to mention here, in corroboration of the partial spirit shown latterly by the authorities of said colony, that while the *Ban Righ* found port and harbor, free from all incumbrances in the waters of Trinidad, the Venezuelan warship *Bolivar* had neither access nor entry on account of a sudden quarantine, as if to put, in a measure, difficulties in the way of her watchfulness.

It is also the time to express the surprise to which the assertion transmitted by your excellency in the note of March 29 has given rise, that the governor of Trinidad had not received any communication from the consul of Venezuela relative to the revolutionary operations of which that island is the center. In the document which this department has compiled with regard to this grave matter will be seen a protest made by Mr. Charles Benito Figueredo, consular agent of Venezuela in Port of Spain, on the 6th of March, to the governor, on account of the liberty enjoyed by the insurgent ship, and the immunity which enabled her to carry out her numerous plans on the soil of the island to conspire against the peace of this territory.

There is also proof of the protest previously made to the governor by the official agent of the Republic relative to the new acts which have occurred on the island against the tranquillity and the institutions of Venezuela. I inclose copy of the same.

The foregoing confirms the ample justice which the Venezuelan Government has for claiming, as it will do at the proper time, the compensation for the damages and injuries occasioned by the steamship *Ban Righ*, and augmented by the manifest partiality shown by the neighboring colony.

Meantime, in accordance with the express orders of the constitutional President of the Republic, decided in the council of ministers, the contents of the note of March 13, No. 363, is hereby reiterated.

I renew to your excellency the assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,  
*Minister Resident of His Britannic Majesty.*

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BRITISH LEGATION,  
*Caracas, April 8, 1902.*

SIR: I have the honor to acknowledge the receipt of your excellency's communication of the 5th instant, expressing the view taken by the Venezuelan Government in regard to the *Ban Righ* or *Libertador*, and the various questions connected with said vessel which refer to the relations between Trinidad and Venezuela.

I will avail myself of the first opportunity to forward this note for the consideration of His Majesty's Government.

At the same time I have the pleasure to inform you that the friendly intentions of His Majesty's Government toward Venezuela—shown by the order given to the said vessel to leave Port of Spain immediately after it was known that she had entered the port—having been frustrated from the fact that said vessel was completely unrigged, I have just received from the Marquis of Lansdowne, first secretary of state to His Majesty in the office of foreign affairs, notice that His Majesty's Government had instructed His Majesty's minister in Bogota that unless satisfactory assurances were given, in the first place, that the said vessel is the property of Colombia, and in the second place, that it will not be allowed to take part in the illegal hostilities against Venezuela, in which she is said to have been engaged, she will not be permitted to repair and be made seaworthy.

I have also the pleasure to communicate to your excellency that the Colombian consul in Port of Spain, having requested permission to transfer, presumably from the vessel referred to, 5,000 rifles and 3,000,000 bullets to one of the Liverpool line of steamers for the transportation to Carthagena, the governor of Trinidad will be instructed (he has doubtless received the notice by this time) that such permit can not be conceded.

I avail myself of this opportunity to renew to your excellency the assurances of my highest esteem.

W. H. D. HAGGARD.

His Excellency Gen. J. R. PACHANO,  
*Minister of Foreign Affairs.*

The English minister presents his compliments to the minister of Foreign Affairs, and has the honor to request that he have inserted, at the conclusion of the note of this date relative to the *Ban Righ*, or *Libertador*, after the word "conceded," a new paragraph as follows: "It will be necessary to await the result of the communications with the Colombian Government." This paragraph will then be the end of that note. It was a part of the instructions received from His Majesty's Government, but was accidentally omitted in the copy.

W. H. D. Haggard avails himself of this opportunity to reiterate to His Excellency Gen. J. R. Pachano the assurances of his highest esteem.

CARACAS, *April 8, 1902.*

His Excellency Gen. J. R. PACHANO,  
*Minister of Foreign Affairs.*

No. 483.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, April 11, 1902.*

SIR: I have the honor to advise your excellency of the receipt, by this department, of the two notes of the 8th instant from your legation, and I avail myself of this opportunity to renew to your excellency the profession of assurances of my highest and most distinguished consideration.

J. R. PACHANO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,  
*Minister Resident of His Britannic Majesty.*

No. 539.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAW,  
*Caracas, April 24, 1902.*

SIR: By order of the constitutional President of the Republic, in relation to the subject-matter of the two notes from your legation of the 8th instant, I have to inform your excellency, by virtue of knowledge which has come direct to the Government, that the arms and ammunition, held on board of the revolutionary steamer were nearly all removed and forwarded in clandestine manner to the Venezuelan coast. As proof of so grave an act is the fact that a great many of said arms and ammunition were captured in the fight which followed the occupation and pacification of Guaira by the national troops.

The President desires that His Majesty's legation should take note of this circumstance for the purposes expressed by the Government in the course of the correspondence relative to the *Ban Righ*.

Your excellency will please accept the renewed professions and assurances of my highest and most distinguished consideration.

MANUEL FOMBONA PALACIO.

His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,  
*Minister Resident of His Britannic Majesty.*

BRITISH LEGATION,  
*Caracas, May 23, 1902.*

SIR: Without delay I transmitted to the governor of Trinidad the note from Dr. Fombona Palacio, of the 24th of April, which stated that "the greater part of the arms and ammunition which was aboard the revolutionary vessel—presumably the *Ban Righ*, or *Liberatador*—had been removed and clandestinely forwarded to the Venezuelan coast," and as proof of the same the fact that "some arms taken in the fight which resulted in the occupation and pacification of Guaira by the national troops."

I have the honor to inclose copy of the reply of his excellency, by which it will be seen that the arms and ammunition referred to are still aboard of the said vessel.

I avail myself of this opportunity to reiterate to your excellency the assurances of my highest esteem.

W. H. D. HAGGARD.

His Excellency Gen. DIEGO B. FERRER,  
*Minister of Foreign Affairs.*

[Copy.]

TRINIDAD, GOVERNMENT HOUSE,  
*May 14, 1902.*

SIR: I have the honor to acknowledge the receipt of your letter of the 28th ultimo, transmitting copy of a note from the Venezuelan Government, in which it is stated that the arms, etc., from the *Ban Righ* had been removed clandestinely.

Upon receipt of your letter I instructed the customs collector to request permission of the Colombian consul to inspect the hold of the *Ban Righ*. This permission was immediately granted, and the inspection having been made, it was found that the arms and ammunition are still on the *Ban Righ*.

I have, etc.,

ALFRED MOLONEY,  
*Governor.*

His Excellency Mr. W. H. D. HAGGARD,  
*Resident Minister of His Britannic Majesty.*

## VENEZUELA'S "YELLOW BOOK," PAGES 287-296.

BRITISH LEGATION,  
*Caracas, July 4, 1902.*

SIR: In my note of April 8 I had the honor to inform the predecessor of your excellency of the friendly intentions of the Government of His Majesty toward Venezuela relative to the *Ban Righ*. These are, in brief, unless the Government of Colombia should give security, that:

First. That the vessel in question is a public vessel of Colombia; and,

Second. That in the future it shall not be permitted to take part in any hostile action against Venezuela; that it shall not be allowed to be repaired at Puerto España; and in a verbal note dated the following day I added that it would be necessary to await the results of the communications addressed to the Colombian Government.

I have the honor to advise your excellency that I have learned from the Marquis of Lansdowne, secretary of state for His Majesty in the office of foreign affairs, that the result of those communications is that the Government of His Majesty has received satisfactory assurances from the Colombian Government, first, that the *Ban Righ* belongs to Colombia, and, in the second place, that as long as a war does not exist between Venezuela and Colombia the use of said vessel will not be authorized to commit hostile acts against this country.

I have also been advised by his excellency that orders have been issued for the vessel to proceed to Colombian waters and be stationed there, and that instructions have been given to the governor of Trinidad to allow said vessel to be repaired at Puerto España and then to proceed to those waters.

I take this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Gen. DIEGO B. FERRER,  
*Secretary of Foreign Relations.*

No. 935.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAWS,  
*Caracas, July 16, 1902.*

SIR: In the communication which your excellency directed on the 4th instant to General Ferrer, there was transmitted to the Government of Venezuela, by direction of His Majesty, the result of a report relative to the vessel *Ban Righ*, which your excellency had promised this department on the 8th of April. The vice-president, in the exercise of the Executive power, has made note of the ample assurances

now given by the Government of His Majesty relative to said steamer; but while said reports do not change the opinion which the Government of Venezuela has held from the beginning relative to the status of said vessel, and which now moves the Government to protest solemnly against the recognition of said vessel by Great Britain, as though treating of a vessel not placed beyond the pale of international law.

Neither can the aforementioned assurances limit or diminish in the least the rights advanced by Venezuela, by reason of former circumstances, from the departure of the *Ban Righ* from English ports, with a British flag and British papers, till the consummation by said vessel, now declared a pirate, of acts directly prejudicial to the commerce, the peace, and general interests of the Republic.

Accept, your excellency, the renewed assurances of my highest and most distinguished consideration.

R. LÓPEZ BARALT.

To His Excellency Mr. WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His Britannic Majesty.*

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BRITISH LEGATION,

*Caracas, July 30, 1902.*

SIR: I have the honor to advise your excellency that I have been informed by the Government of His Majesty that it has seriously considered a series of cases in which the Venezuelan Government has prejudiced the property and liberty of British subjects in an absolutely unjustifiable manner.

It enumerates the following cases which have occurred since the beginning of last year:

That of the capture and deportation by the Venezuelan gunboat *Augusto* of British subjects; that of the capture of the boat and property of John Craig on the island of Patos; the case of the *Buena Fe*, which involved a similar injury and a violation of territory; that of *La María Teresa*, that of the *Pastor*, that of *La Indiana*, and that of the *In Time*.

None of these cases have been satisfactorily explained.

The confiscation of the British bark *Queen* seems to the Government of His Majesty the most flagrant case.

The Government of His Majesty finds it impossible to tolerate the continuation of a course of conduct which, in the incident last mentioned, reached the limit, and therefore has given me instructions to present a formal protest relative thereto, and to indicate to his excellency the President, and to the secretary of foreign affairs, in terms with respect to which there can be no doubt, that unless the Government of His Majesty receives explicit assurances that such incidents



shall not recur, and that unless there be paid promptly full compensation to the persons prejudiced, wherever it is shown to the satisfaction of the Government of His Majesty that such compensation is justly due, it will take such steps as it may consider necessary in order to demand the reparation which it has the right to demand in those cases, as well as the claims of the British railway companies of Venezuela for any loss sustained by the conduct of the Venezuelan consul at Trinidad, for which there is no possible justification.

I embrace this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. R. LÓPEZ BARALT,  
*Secretary of Foreign Affairs.*

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No. 977.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAWS,  
*Caracas.*

SIR: The note of your excellency, dated July 30, which I received the 1st of the present month, contains in brief the complaints and claims relative to a number of subjects, many of which, as per example, the capture of the boat of John Craig and the proceedings against the sloop *María Teresa*, was considered by the Government of the Republic as entirely closed. Another of those questions, that relating to the little isle of Patos, has been for some time defined by Venezuela without any judicial argument on the part of Great Britain; and the other questions have already been explained or are being explained, even though the reply to them has been delayed by force of circumstances, so it is unnecessary to go over them again as the legation of His Majesty is well acquainted therewith. Therefore the chief of the executive power is surprised at the manner in which your excellency sets forth those facts, as well the general character of the note; but without considering it a proper time, and notwithstanding all the objections which are suggested against it, the Government has decided to reply thereto immediately, in view of the reply given to the questions of that or of a similar character, and because of the losses occasioned by the *Ban Righ* and the partiality shown by the authorities of Trinidad in their action against the peace of Venezuela.

The surprise of the Chief of the Government is all the more justifiable by the fact that there is now brought into the discussion questions of various kinds, some already decided, and at a time when the legation could not consider it proper to investigate pending questions, as the complaints and claims presented to Great Britain on account of said vessel and the attitude assumed by the authorities at Trinidad are

still unsettled. Your excellency knows that the arguments of Venezuela in this matter consists of evidence on file in the archives of this department; you know, also, according to the notes dated February 28, March 8 and 13, and April 5, that since then the treatment of the other questions with the legation were deferred, and attention was directed to the prompt solution of the former question in order to preserve friendly relations with the Government of His Britannic Majesty, so earnestly desired by the Government of Venezuela.

This is therefore the opportunity to remind your excellency again, that until the question of such great importance to the interests of both nations is not satisfactorily decided this department can not take up other subjects entirely foreign thereto.

The conduct which in the note is attributed to the consul in Trinidad is a matter which may be considered as related to the partiality of the colonial authorities.

Accept, your excellency, the renewed assurances of my highest and most distinguished consideration.

R. LÓPEZ BARALT.

His Excellency WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister, His Britannic Majesty.*

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BRITISH LEGATION,  
*Caracas, August 21, 1902.*

SIR: At various times your excellency has said and I have been informed that the Venezuelan Government has constantly asserted that the arms and munitions remaining in the *Ban Righ* or *Bolivar*, in Puerto Espana, had been taken from the vessel and transported to the mainland for the use of the revolution.

Your excellency knows from an official communication dated April 24, in which your predecessor stated that the greater part of those munitions had been taken from the vessel for that purpose; that the governor of Trinidad, with the permission of the consul of Colombia, made an examination, which showed that the arms and munitions, which the Venezuelan Government asserted had been taken to Venezuela, were found on board.

The governor ad interim of the colony, with the consent of the Colombian consul, has now made another official examination of the collector of customs, and reports that he also found on board a large stock of arms and munitions.

Your excellency should remember, that as stated by the collector of customs in his report, it is well known that the sources of supply for the revolution have been many.

He states, for example, that during the last three months the revolution has received both arms and munitions from Germany through

a Colombian port. He mentions other sources of supplies with which your excellency is doubtless acquainted.

I take this opportunity to renew to your excellency the assurance of my highest consideration.

W. H. D. HAGGARD.

His Excellency Dr. LÓPEZ BARALT,  
*Secretary of Foreign Relations.*

No. 1058.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAWS,  
*Caracas, August 27, 1902.*

SIR: The note of your excellency of the 21st having been considered by the Government it finds that the reports of the administration of Trinidad relative to the arms carried by the vessel *Ban Righ* can not cause to disappear, and much less destroy, the basis of the claims and complaints of Venezuela, because to the evidence of deeds performed can not be opposed either in this, or in another like case, circumstances which occurred later. In order to strengthen such evidence it may not be out of place to mention incidentally, as a new argument, what the English captain, Willis, the seditious captain of the *Ban Righ* said, when the vessel was dispatched from British ports, a statement not yet denied and which appeared in a London paper, *The Daily News*, published the 7th of last July. The captain stated in that paper that the cargo carried by the steamer consisted of 175 tons of Mausers, 180 tons of munitions, a large number of pieces of artillery and campaign carts, which is very far from being the small amount which seems to be referred to in the last report of the acting governor of the colony.

With reference to the supply of arms which came from Germany, the Government considers that this is a mistake, as it is well known that the revolutionary supplies, both in the beginning as well as during these last months, have entered the Republic through the coasts adjacent to Trinidad and not through other avenues.

From the above it must be assumed that the Government finds it impossible to attribute to the report now communicated by your excellency any force contrary to the declaration made to your excellency in my note of the 16th ultimo, No. 935, which the Government hereby confirms and reproduces in all its parts.

The note of my predecessor, dated April 24, stated that the arms and munitions guarded on board the revolutionary steamer had for the most part been taken and dispatched in a clandestine manner for the coasts of Venezuela.

The report of the acting governor states that the collector of customs now finds on board of the *Ban Righ* a large quantity of arms

and munitions. The existence of the latter does not exclude the former fact nor nullify the deductions that are logical or natural.

I inclose herewith for your excellency a copy of the Venezuelan Herald in which is reproduced in Spanish the account attributed to Captain Willis by the London newspaper.

Please accept, your excellency, the renewed assurances of my highest and most distinguished consideration.

R. LÓPEZ BARALT.

His Excellency WILLIAM HENRY DOVETON HAGGARD,  
*Minister Resident of His Britannic Majesty.*

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No. 1255.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAWS,  
*Los Teques, October 27, 1902.*

SIR: The Government of the Republic has been careful to report fully to the British legation ever since last January for the information of the Government of His Britannic Majesty all the injury caused to the country by the expeditions and acts of the *Ban Righ* and by the conduct observed by the authorities of Trinidad with reference to the revolutionary events of which Venezuela has been the bloody theater, and does not wish to allow to pass, without the necessary statement or the corresponding protest, the recent fact of the post-office of that island having forwarded on the 7th of the present October in a foreign war vessel several sacks of mail to the Ciudad Bolivar, a place occupied by groups of rebels against the constitutional power. The forwarding of mail through means foreign to those provided or established by the convention at Washington June 15, 1897, was an act in violation of the Universal Postal Union, of which that colony formed a part, and the forwarding of said mail to a place in rebellion against the constitutional Government of an adjacent country (a place furthermore included within the blockading lines) might even signify the purpose of facilitating communication with the revolutionary center and thus render more difficult the repressive action which the agents of the law might exercise for the purpose of restoring peace.

This protest, which in view of this unexpected fact, was presented on the 15th of the current month by the consul of Venezuela to the honorable colonial secretary, is confirmed by the present note, in which, at the same time, the Government desires to leave on record that the action of the postal authorities of Trinidad becomes a new and very serious proof of the facilities with which the Venezuelan insurgents have there found for their operations.

Not only in conditions created by a domestic sedition, like that of the Ciudad Bolivar, but in formal wars between belligerents, the

transportation of documents directed to one of the contending parties is considered unfortunate and entirely inadmissible; and the British legation is well acquainted with the order issued by the English Government, March 28, 1854, in view of the eastern war, in which correspondence with the enemy is placed among the articles whose transportation is prohibited by neutrals. Therefore, the Government considers it doubly contrary to the principles of law and the rule of national comity, the action of the postal authorities of the British colony; and upon protesting against the above the Government desires to add said protest to all other actions that influenced Venezuela to set forth the claims mentioned in the final paragraph of the note addressed to the British legation, under date of April 5 last, and bearing No. 450.

Accept, your excellency, the renewed assurance of my highest and most distinguished consideration.

R. LÓPEZ BARALT.

His Excellency WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His Britannic Majesty.*

No. 1369.]

DEPARTMENT OF FOREIGN AFFAIRS,  
OFFICE OF FOREIGN PUBLIC LAWS,  
*Caracas, November 24, 1902.*

SIR: The document containing the complaints and claims of Venezuela prepared as a result of the action of the *Ban Rich* and of the attitude assumed by the authorities of Trinidad ever since the peace of the eastern markets of the Republic has been disturbed, has just been added to by an action of grave injury in view of its varied and transcendental importance. I refer to an official forwarding announced on the 12th instant by the post-office of Trinidad of mail for the Ciudad Bolivar, on the English war vessel *Fantome*, an action by which the post-office department of the colony, in addition to violating the most elemental principles of law and the best-known rules of national comity—for it thus established direct communication between the island and a place occupied by revolutionists against which was operating the military force of the Government—it has compromised a vessel of the navy of His Majesty in an action clearly in violation of the postal convention of Washington of 1897, duly ratified both by Venezuela and by Great Britain.

On the 27th of last October the Government protested, in a note sent to the British legation, against the sending of mail from Puerto Espana to Ciudad Bolivar on a German war vessel, the *Panther*, and now, with greater reason, there is room for a protest and a claim against the participation of the *Fantome*, a vessel of His Majesty, in an action which seriously injures the general interests of the public,

because it directly favors the sedition in the Ciudad Bolivar, where the Federal Government is occupied in putting down the revolution.

This department trusts that your excellency will take account of the serious action referred to and of the new protest to which it has given rise for the purposes mentioned, in the concluding part of the note of April 5 last, No. 450.

Accept, your excellency, the repeated assurance of my highest and most distinguished consideration.

R. LÓPEZ BARALT.

His Excellency WILLIAM HENRY DOVETON HAGGARD,  
*Resident Minister of His Britannic Majesty.*

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CORRESPONDENCE AND CABLEGRAMS RELATING TO THE VENEZUELAN PROTOCOLS.

*Mr. Bowen to Mr. Hay.*

[Telegram.—Paraphrase.]

CARACAS, *December 9, 1902.*

Mr. Bowen reports receipt of a note from the Venezuelan Government stating belief that differences with Great Britain and Germany can be settled by arbitration, and requesting Minister Bowen to represent Venezuela as arbitrator. Mr. Bowen requests instructions from the Department. Mr. Bowen adds that combined British and German war ships had that day captured all Venezuelan war vessels in harbor La Guaira, and probably in other ports.

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*Mr. Hay to Mr. Bowen.*

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,  
*Washington, December 10, 1902.*

Mr. Hay authorizes Mr Bowen to act as an arbitrator on the part of Venezuela, if Venezuela proposes arbitration and Great Britain and Germany acquiesce.

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*Mr. Bowen to Mr. Hay.*

[Telegram.]

CARACAS, *December 11, 1902.*

I have received following note from minister for foreign affairs:

The Venezuelan Government requests you as the temporary representative of British and German interests to propose to Great Britain and Germany that the present difficulty that has arisen respecting the manner of settling claims which



have been presented for alleged damages and injuries to British and German subjects during the civil war be submitted to arbitration. Please answer whether you will forward this, and will advise me promptly when reply is made.

BOWEN.

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*Mr. Hay to Mr. Bowen.*

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,  
*Washington, December 12, 1902.*

Mr. Hay advises Mr. Bowen that he has telegraphed without comment to the United States representatives at Berlin and London the Venezuelan proposal to arbitrate manner of settling civil war indemnity claims.

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*Mr. Bowen to Mr. Hay.*

No. 137.]      LEGATION OF THE UNITED STATES,  
*Caracas, Venezuela, December 13, 1902.*

SIR: I have the honor to inclose herewith copies of the letters that have passed between the Venezulean Government and me in regard to my serving as arbitrator for Venezuela.

I am, etc.,

HERBERT W. BOWEN.

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[Inclosure 1.—Translation.]

*Doctor Baralt to Mr. Bowen.*

MINISTRY OF FOREIGN AFFAIRS, UNITED STATES OF VENEZUELLA,  
*Caracas, December 9, 1902.*

MR. MINISTER: The chief of the Government knows that your excellency is acquainted with the latest phase of the difficulty between Venezuela and Germany and Great Britain in regard to the settlement of claims for alleged damages to the subjects of the two latter nations during the civil war. The above-mentioned difficulty, in the opinion of the Venezuelan Government, has no valid foundation, as the precedents on which the Government bases its opinion arises from pure doctrines of law as well as from practical doctrines of indisputable validity. But as it has not been possible to convince the other parties of the justice of Venezuela's attitude, and as the Government desires to avoid, without impairing its decorum or its legal faculties, any conflict with nations it considers as friends and to which it is bound by the ties of civilization, it has deemed it proper to resort to the medium of arbitration. a medium resorted to by modern nations and approved by the constitution of the Republic. Consequently, the chief of the Government, aware of your excellency's personal character and high order of intelligence, has instructed me to request your

excellency to serve as arbitrator for the Republic in this question. Your excellency's consent, which I venture to hope will be given as soon as possible, will determine the nature of the proposals which the Government intends to make to the above-mentioned nations.

Accept, etc.,

R. LÓPEZ BARALT.

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[Inclosure 2.]

*Mr. Bowen to Doctor Baralt.*

LEGATION OF THE UNITED STATES,

*Caracas, December 11, 1902.*

MR. MINISTER: In answer to your very courteous letter of the 9th instant I have the honor to inform you that I cabled the contents thereof to my Government and received the following answer by cable:

"If Venezuela proposes arbitration and Great Britain and Germany acquiesce, you may act as an arbitrator on the part of Venezuela."

I can only add that it will give me great pleasure to serve Venezuela in this matter if the opportunity presents itself and the conditions as above stated by my Government are observed.

I gladly avail myself, etc.,

HERBERT W. BOWEN.

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[Inclosure 3.—Translation.]

*Doctor Baralt to Mr. Bowen.*

MINISTRY OF FOREIGN AFFAIRS OF THE

UNITED STATES OF VENEZUELA,

*Caracas, December 11, 1902.*

MR. MINISTER: I had the honor to inform the chief of the nation of your reply to my note of the 9th instant, in which your excellency not only kindly consents to serve the Republic in the present international imbroglio, but also informs us of the good will of the United States in permitting you to be arbitrator on the part of Venezuela in the difficulty that has arisen respecting the manner of settling the claims of Great Britain and Germany for alleged damages and injuries to their subjects during the civil war.

The President thanks your excellency sincerely for your friendly attitude, and at the same time desires you to convey to your Government the appreciation of Venezuela of the good will manifested by the United States in this question.

Accept, etc.,

R. LÓPEZ BARALT.

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*Mr. Bowen to Mr. Hay.*

[Telegram.]

CARACAS, *December 15, 1902.*

Very important for me to know without delay whether England and Germany will answer my cablegram proposing arbitration.

BOWEN.

*Mr. Hay to Mr. Bowen.*

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,  
Washington, December 16, 1902.

Mr. Hay informs Mr. Bowen that no reply has been received from Great Britain and Germany. He has repeated proposition to arbitrate, with strong recommendation, and will advise Mr. Bowen promptly of replies when received.

*Mr. Bowen to Mr. Hay.*

[Telegram.—Paraphrase.]

CARACAS, December 18, 1902.

Mr. Bowen has received the following official communication:

The Venezuelan Government confers on Mr. Herbert W. Bowen full powers to enter into negotiations to settle in the most favorable manner possible to the interests of the Republic the present difficulty which has arisen with the United Kingdom of Great Britain, the German Empire, and the Kingdom of Italy.

In witness whereof these presents are issued in Caracas the 18th of December, 1902.

CIPRIANO CASTRO,  
Constitutional President.

Countersigned.

LÓPEZ BARALT,  
Minister for Foreign Affairs.

Mr. Bowen requests that if Mr. Hay decides to authorize him thus to act for Venezuela to notify Germany, Great Britain, and Italy and obtain their consent immediately and request them to issue orders for an immediate stay of proceedings in Venezuela. He thinks he should treat with the ambassadors of those three powers at Washington and not with the naval officers in Venezuela, nor with the plenipotentiaries sent to Caracas from Berlin, London, and Rome, but he begs Mr. Hay to arrange the time and place. He thinks there should be no unnecessary delay.

If he leaves Caracas he would proceed by the regular steamer to arrive in New York December 29; but if Mr. Hay authorizes his going on the *Marietta*, he could arrive a week earlier.

*Mr. Hay to Mr. Bowen.*

[Telegram.—Paraphrase.]

DEPARTMENT OF STATE,  
Washington, December 18, 1902.

Mr. Hay informs Mr. Bowen that he has cabled to London, Berlin, and Rome the Venezuelan proposition to empower Mr. Bowen to

negotiate on the part of Venezuela for settlement of the pending difficulties of the three powers, and has inquired if they are disposed to assent.

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*Mr. Bowen to Mr. Hay.*

[Telegram.—Paraphrase.]

CARACAS, *December 20, 1902.*

Mr. Bowen states that arbitration at The Hague is objectionable, because very slow and expensive, and in the present case prejudicial to the interests of the Venezuelan Government, which wishes its war vessels returned at once, and the control of its rivers and ports, so as to prevent arms and ammunition from being imported by the revolutionists, who are so numerous that if they receive a good supply of arms and ammunition will make the reestablishment of peace more difficult. Mr. Bowen believes that Venezuela would be satisfied to pay a good sum in cash at once to the three powers, and would agree that a mixed commission should settle the amounts to be paid on claims, and that Venezuela would furnish ample guaranty that payment of such amounts will be promptly made. Mr. Bowen states that in the exercise of the full powers given to him he may decide that in the interests of Venezuela it is better to accept at once and in full the ultimatums of the three powers than to leave the matter to the tribunal at The Hague. He states that he of course prefers a modification of the ultimatums, if possible, concerning amounts of cash payments. He asks, if Hague arbitration is desired, what favorable proposition can be made to Venezuela by the powers? If they would release war ships immediately after and stop blockade? He adds that he is bound to act in the interest of Venezuela.

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*Mr. Bowen to Mr. Hay.*

No. 145.]

LEGATION OF THE UNITED STATES,  
*Caracas, December 27, 1902.*

SIR: I have the honor to inclose a translation of a petition to President Castro from the leading men of Caracas, asking that I be authorized to arrange the pending difficulty between Venezuela and Great Britain, Germany, and Italy.

I am, etc.,

HERBERT W. BOWEN.

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[Inclosure.—Translation.]

CARACAS, *December 16, 1902—4.30 p. m.*

*To the Citizen President of the United States of Venezuela:*

The undersigned having assembled for the purpose of trying to aid the Government in the present conflict caused by the aggressive attitude of Ger-

many and England, and having been asked by you to submit our opinion in writing, we do so, as follows:

In view of the aggressive acts committed, of the absolute helplessness of Venezuela to oppose with force the combined action of Germany and England, and of the absolute lack of resources which civilization and diplomacy would advise to put an end to the conflict, and in view, further, of the fact that the Government and people of Venezuela have done all that the national decorum and dignity demand, we consider that the time has arrived to yield to force, with the proper protests; and in virtue of the foregoing, we respectfully suggest that full powers be given to the envoy extraordinary and minister plenipotentiary of the United States of North America to take the necessary steps to arrange the difficulty in the manner least prejudicial to the country.

With all consideration and respect, we subscribe ourselves your very attentive and obedient servants.

J. E. LINARES.  
H. L. BOULTON.  
CARLOS SANTAGA.  
NICOMEDES ZULOAGA.  
CARLOS ZULOAGA.  
F. DE SALAS PÉREZ.  
E. MONTAUBAN.  
M. CHAPELLIN.  
JOSE HERRERA.  
JUAN A. TRAVIESO.  
J. DE J. PAUL.

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*Mr. Hay to Mr. Bowen.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, December 27, 1902.*

The following is the British memorandum in regard to the terms of arbitration:

His Majesty's Government have, in consultation with the German Government, taken into their careful consideration the proposal communicated by the United States Government at the instance of that of Venezuela. The proposal is as follows:

That the present difficulty respecting the matter of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration. The scope and intention of this proposal would obviously require further explanation. Its effect would apparently be to refer to arbitration only such claims as had reference to injuries resulting from the recent insurrection. This formula would evidently include a part only of the claims put forward by the two Governments, and we are left in doubt as to the manner in which the remaining claims are to be dealt with. Apart, however, from this, some of the claims are of a kind which no Government could agree to refer to arbitration. The claims for injuries to the person and property of British subjects, owing to the confiscation of British vessels, the plundering of their contents, and the maltreatment of their crews, as well as some claims for the ill usage and false imprisonment of British subjects, are of this description. The amount of these claims is no doubt comparatively insignificant, but the principle at stake is of

the first importance, and His Majesty's Government could not admit that there was any doubt of the liability of the Venezuelan Government in respect to them. His Majesty's Government desire, moreover, to draw attention to the circumstances under which arbitration is now proposed to them. The Venezuelan Government have, during the last six months, had ample opportunities for submitting such a proposal.

On July 29, and again on November 11, it was intimated to them in the clearest language that unless His Majesty's Government received satisfactory assurances from them, and unless some steps were taken to compensate the parties injured by their conduct, it would become necessary for His Majesty's Government to enforce their just demands. No attention was paid to these solemn warnings, and in consequence of the manner in which they were disregarded His Majesty's Government found themselves reluctantly compelled to have recourse to the measures of coercion which are now in progress. His Majesty's Government have, moreover, already agreed that in the event of the Venezuelan Government making a declaration that they will recognize the principle of the justice of the British claims and that they will at once pay compensation in the shipping cases and in the cases where British subjects have been falsely imprisoned and maltreated His Majesty's Government will be ready, so far as the remaining claims are concerned, to accept the decision of a mixed commission, which will determine the amount to be paid and the security to be given for payment. A corresponding intimation has been made by the German Government. This mode of procedure seemed to both Governments to provide a reasonable and adequate mode of disposing of their claims. They have, however, no objection to substitute for the special commission a reference to arbitration with certain essential reservations. These reservations are, so far as the British claims are concerned, as follows:

One. The claims, small, as has already been pointed out, in pecuniary amount, arising out of the seizure and plundering of British vessels and outrages on their crews and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration.

Two. In cases where the claim is for injury to, or wrongful seizure of, property, the questions which the arbitrators will have to decide will only be (a) whether the injury took place and whether the sentence was wrongful, and (b), if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

Three. In the case of claims other than the above, we are ready to accept arbitration without any reserve. It would, in the opinion of both Governments, be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

Should the President of the United States be willing to undertake the task of arbitrator the British and German Governments would avail themselves of his good offices with the highest satisfaction. If it should unfortunately prove impossible for the President to render this important service to the two Governments, they are prepared to refer the questions at issue to arbitration by The Hague Tribunal.

HAY.



*Mr. Hay to Mr. Bowen.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, December 27, 1902.*

The German propositions in regard to preliminary conditions of arbitration are as follows:

The Imperial German Government expresses to the Government of the United States its earnest thanks for its efforts to adjust the troubles with Venezuela. The proposition made by the United States to establish an arbitration appears to Germany, as well as to England, a suitable means by which to arrive at a just decision in regard to their claims. It is to be noted, however, that there are certain claims of Germany which can not be submitted to arbitration, namely, such claims as had arisen out of the civil war from 1898 to 1900, which were set forth in the memorandum addressed by the chancellor to the Reichstag on December 8, 1902. These claims have been assessed by Germany at an aggregate of \$325,000, which must be paid immediately or sufficiently guaranteed by Venezuela. All other claims set forth in the ultimatums will be submitted to arbitration; that is to say, not only those arising out of the present civil war in Venezuela, but also, as far as Germany is concerned, the claims referred to in the above-mentioned memorandum, which are based on the failure of the Government of Venezuela to fulfill its obligations toward German contractors under treaty engagements. The arbitrator shall decide upon the claims submitted as well as on the mode of satisfying them, and the security to be given in the case of claims arising from damage to or illegal seizure of property. The Government of Venezuela also will be required to admit in principle its responsibility; that is to say, that this responsibility does not form the basis of the present arbitration, but that the arbitrator shall decide solely as to the injury to or illegal seizure of property, and shall assess the damages therefor. The Government of the United States will place Germany and Great Britain under profound obligation if it will use its good offices to induce the Government of Venezuela to accept these propositions. The two governments would be grateful to the President of the United States if he would accept the position of arbitrator under the foregoing conditions. If, however, the President of the United States should, to the great regret of the two governments, decline their invitation, then they are prepared to submit the case to The Hague Tribunal.

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*Mr. Bowen to Mr. Hay.*

[Telegram.—Paraphrase.]

CARACAS, *December 31, 1902.*

Mr. Bowen quotes the following answer received from the President of Venezuela:

I recognize in principle the claims which the allied powers have presented to Venezuela. They would already have been settled if it had not been that the civil war required all the attention and resources of the Government. To-day the Government bows to superior force, and desires to send Mr. Bowen to Washington at once to confer there with the representatives of the powers that have claims against Venezuela, in order to arrange either an immediate settle-

ment of all the claims or the preliminaries for a reference to the tribunal of The Hague or to an American Republic, to be selected by the allied powers and by the Government of Venezuela. Mr. Bowen would be duly authorized to settle the whole question as the representative of Venezuela.

CIPRIANO CASTRO.

Mr. Bowen urges, in view of the foregoing, that the Secretary of State request the powers to raise their blockade at once.

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*Mr. Bowen to Mr. Hay.*

[Telegram.—Paraphrase.]

CARACAS, *January 6, 1903.*

Mr. Bowen states that the attitude of the authorities in Caracas, both toward foreigners and the blockaders, has been exemplary since the 10th day of last December, when all the British and German subjects resident in Venezuela who had been arrested were set free. He reports that President Castro has done all in his power to come to a fair agreement with the allied powers; that he has been ready and anxious to settle his controversy with them; that he has believed that if he could send a representative to Washington to confer with diplomatic representatives there of the allied powers his representative could convince them that the terms he has to offer are reasonable and would be so satisfactory that it would be unnecessary to carry the controversy to The Hague; that the claims against him are purely commercial in character; that he acknowledges that he must pay such of them as are just; that he would have preferred to wait before paying them until he had reestablished peace in Venezuela, but since the allied powers have declared he must yield at once to their demands he feels that he is obliged to bow to superior force. Mr. Bowen further says that President Castro, under the foregoing circumstances, desires a speedy settlement of the controversy, so as to put an end to the blockade of his ports, which deprives him of paying the expenses of his Government and which is oppressive to his people and to all foreigners residing in Venezuela. President Castro thinks it strange that, as he is willing to pay what he owes and to offer a good guaranty that he will satisfy his creditors, he should not be allowed to come to an agreement with them without delay, but is forced to carry the controversy before the tribunal at The Hague. President Castro has the greatest respect for that tribunal, but does not see why he should be forced to submit a controversy to it which could be settled at Washington quickly, easily, and at little expense. A proposition to settle in civil cases being always in order before the court renders its judgment, President Castro thinks that, as this is essentially a civil case, the allied

powers should at least give his representative a courteous hearing; but if they are indisposed to do so and insist on The Hague, he feels that they ought to raise their blockade the moment he binds himself to abide by the decision of that tribunal. As he represents a weak nation, and can not enforce his views, he trusts to the Government at Washington to use its good offices to secure just treatment for him.

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*Mr. Hay to Mr. Bowen.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, January 6, 1903.*

The following memorandum, being the reply of the German Government, was communicated to Ambassador Tower to-day:

The German Government learns with satisfaction that the Venezuelan Government has accepted its demands in principle. Before further negotiations can be undertaken with Venezuela, however, it seems necessary that the President of Venezuela should make a definite statement as to the unconditional acceptance of the three preliminary conditions set forth in the German memorandum of December 22, 1902. He will also have especially to declare how he intends either to pay or to secure the claims set forth in paragraph 1. On receipt of a satisfactory assurance from the Government of Venezuela the German Government will be prepared to instruct its ambassador in Washington to open negotiations with Mr. Bowen, as the representative of Venezuela, and to consider his propositions in regard to an adjustment. These propositions may relate to an immediate settlement, or to a reference to The Hague Tribunal, of all claims, except, of course, those mentioned in paragraph 1. The German Government makes the condition, however, that the discussion of any proposition for immediate payment shall not prejudice the right of reference to The Hague Tribunal.

The German Government will be very greatly obliged to the Government of the United States if it will transmit the foregoing reply to President Castro.

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*Mr. Hay to Mr. Bowen.*

[Telegram.]

DEPARTMENT OF STATE,  
*Washington, January 7, 1903.*

United States ambassador to Italy sends me to-day the Italian reply, which is in substantially the same terms as the British and German memorandum, with following addition:

Referring to their preceding declarations, Government of Italy gives its consent, on condition that the claims of Italian subjects receive same treatment as analogous claims of the other powers.

HAY.

*Mr. Bowen to Mr. Hay.*

[Telegram.—Paraphrase.]

CARACAS, *January 7, 1903.*

Mr. Bowen communicates the following statement from President of Venezuela:

MR. MINISTER: The Venezeulan Government accepts the conditions of Great Britain and Germany; requests you to go immediately to Washington for the purpose of conferring there with the diplomatic representatives of Great Britain and Germany and with the diplomatic representatives of other nations that have claims against Venezuela, and to arrange either an immediate settlement of said claims or the preliminaries for submitting them to arbitration.

CIPRIANO CASTRO,  
Constitutional President.

Mr. Bowen states that the guaranty will be the custom-houses, and begs that the blockade be raised at once.

*Mr. Bowen's full powers.*

The Venezuelan Government grants full powers to Mr. Herbert W. Bowen to effect at Washington with the diplomatic representatives of the nations that have claims against Venezuela the immediate settlement of them or the preliminaries for the submission to arbitration of such of them as can not be settled immediately.

CARACAS, *January 7, 1903.*

The Constitutional President,

[SEAL.]

CIPRIANO CASTRO.

Countersigned:

The minister of the interior and acting minister for foreign affairs,

[SEAL.]

(Signed)

R. LÓPEZ BARALT.

*Mr. Hay to Mr. Bowen.*

[Telegram.—Paraphrase.]

WASHINGTON, *January 8, 1903.*

Acknowledges Mr. Bowen's telegram of the 7th, which was communicated to the powers. Informs him that a naval vessel will leave Culebra immediately and will be at his disposition after the 10th, the time required to reach La Guaira.

*Mr. Bowen to Mr. Hay.*

[Telegram.]

CHARLESTON, S. C., *January 19, 1903.*

Have just landed. Shall arrive Arlington Hotel, Washington, tomorrow morning.

HERBERT W. BOWEN.

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*Statement left in the hands of Sir Michael H. Herbert.*

Mr. Bowen proposes that all claims against Venezuela shall be paid out of the customs receipts of the two ports of La Guaira and Puerto Cabello, the percentage to be 30 per cent each month of the receipts. In case of failure on the part of Venezuela to pay the said 30 per cent, the creditor nations will be authorized to put, with the consent and without any opposition on the part of Venezuela, Belgian custom officials in charge of the said two custom-houses, and to administer them until the entire foreign debt is paid.

HERBERT W. BOWEN.

WASHINGTON, *January 23, 1903.*

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*Sir Michael H. Herbert to Mr. Bowen.*

BRITISH EMBASSY,  
*Washington, January 23, 1903.*

DEAR MR. BOWEN: Immediately after you left the embassy on the 20th instant I telegraphed to my government your formal request that the blockade of the Venezuelan ports be raised before the commencement of the negotiations in Washington.

I have now received a telegram from Lord Lansdowne in reply, setting forth the conditions which must be accepted by the Venezuelan Government before his lordship can comply with your request. They are as follows:

1. The claims (small in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews, and the maltreatment and false imprisonment of British subjects, must be satisfied at once.

2. The other claims for compensation, including railway claims and those for injury or wrongful seizure of property, must be met by an immediate payment to His Majesty's Government or by a guaranty adequate to secure them. These claims can be, if desired, examined by a mixed commission.

3. An arrangement must be entered into to satisfy the claims of the bondholders, including a provision for definite sources of payment.

4. There must be an exchange of notes between His Majesty's Government and that of Venezuela, renewing the convention of October 29, 1834.

On learning that the negotiations have resulted in an agreement fulfilling the above conditions, His Majesty's Government will at once give orders that the blockade of Venezuelan ports shall be raised.

I hope to receive my full instructions and all information relating them to-morrow, when I shall be in a position to explain any points in connection with the above conditions which may not seem clear to you.

Believe me, etc.,

MICHAEL H. HERBERT.

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*Mr. Bowen to Sir Michael H. Herbert.*

WASHINGTON, D. C., *January 23, 1903.*

DEAR SIR MICHAEL: In answer to your letter of to-day, stating the conditions on which Great Britain will raise the blockade of the Venezuelan ports, I have the honor to inform you that I accept those conditions, as they are substantially the same as those already accepted by the Venezuelan Government.

I therefore request that your Government give orders at once to have the said blockade raised.

Believe me, etc.,

HERBERT W. BOWEN.

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*Count von Quadt to Mr. Bowen.*

GERMAN EMBASSY,

*Washington, D. C., January 24, 1903.*

MY DEAR MR. MINISTER: With reference to the conversation we just had, I beg to state that the blockade of the Venezuelan ports will be raised by the Imperial German Government immediately—i. e., at the same time as Great Britain does so—if you sign the document which is herewith annexed and undertake therefore all the obligations herein contained.

Believe me, etc.,

A. QUADT,  
*Imperial German Chargé d'Affaires.*

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*Document mentioned in the preceding letter.*

I. As the Imperial German Government holds that the German claims originated from the Venezuelan civil wars of 1898 to 1900 are no more apt to be submitted to arbitration, the Government of Venezuela has to acknowledge at once these claims, amounting to 1,718,815



bolivars, circa \$325,000 and either to pay the said amount cash without any delay, or, should this be impossible, to guarantee the speedy payment of them by warrants which are deemed sufficient by the Imperial German Government.

II. All the other claims which have already been brought to the knowledge of the Venezuelan Government in the ultimatum delivered by the imperial minister resident at Caracas—i. e., claims resulting from the present civil war, further claims resulting from the construction of the slaughterhouse at Caracas, as well as the claims of the German Great Venezuelan Railroad for the nonpayment of the guaranteed interest—are to be submitted to a mixed commission, should an immediate settlement not be possible.

III. The said commission will have to decide both about the fact whether said claims are materially founded and about the manner in which they will have to be settled or which guaranty will have to be offered for their settlement. Inasmuch as these claims result from damages inflicted on property or the illegal seizure of such property, the Venezuelan Government has to acknowledge its liability in principle, so that such liability in itself will not be an object of arbitration and the decision of the commission will only extend to the question whether the inflicting of damages or the seizure of such property was illegal. The commission will also have to fix the amount of indemnity.

Mr. Bowen, having shown his full powers as representative of the Venezuelan Government, accepts herewith the three above-mentioned conditions without any reserve, and agrees to give to Germany the same guaranties that Mr. Bowen has given to Great Britain, and which are stated in his letter to Sir M. Herbert dated January 23, 1903, in confirmation whereof he has applied his signature under this document.

HERBERT W. BOWEN.

WASHINGTON, D. C., *January 24, 1903.*

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*Additional document presented by Count Quadt.*

WASHINGTON, *January 24, 1903.*

The conditions of the German Government having been accepted, Mr. Bowen, as representative of the Venezuelan Government, will now have to provide at once for payment of the 1,718,815 bolivars mentioned under No. 1 of the conditions, or give an adequate guaranty for this amount. Should Mr. Bowen choose the latter way, the guaranty is to be specified distinctly. For instance, in case of a guaranty based on the customs revenues, as suggested by Mr. Bowen, it would be necessary to state exactly in which [way] payment will

take place out of these revenues. The guaranty will have to be given de facto and without any delay.

Mr. Bowen's proposals relative to guaranty will first have to be cabled to the German Government.

HERBERT W. BOWEN.

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*Mr. Mayor des Planches to Mr. Bowen.*

WASHINGTON, D. C., *January 24, 1903.*

MY DEAR MINISTER: With reference to the conversation we just had, I beg to state that the blockade of the Venezuelan ports will be raised by the Royal Italian Government immediately—i. e., at the same time as Germany and Great Britain do so—provided you sign a document in which, in virtue of the full powers granted to you by the Venezuelan Government, you bind yourself to give to my Government, for the Italian claims of every kind, the same guaranty you have given to Germany and Great Britain.

Believe me, etc.,

E. MAYOR DES PLANCHES.

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*Mr. Bowen to Mr. Mayor des Planches.*

WASHINGTON, *January 24, 1903.*

MY DEAR MR. AMBASSADOR: In answer to your letter of this date I have much pleasure in informing you that I hereby consent and agree to give for the Italian claims the same guaranty that I have given for the British and German claims.

Believe me, etc.,

HERBERT W. BOWEN.

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*Mr. Bowen's agreement respecting the 30 per cent.*

WASHINGTON, *January 27, 1903.*

I hereby agree that Venezuela will pay 30 per cent of the total income of the ports of La Guaira and Puerto Cabello to the nations that have claims against her, and it is distinctly understood that the said 30 per cent will be given exclusively to meet the claims mentioned in the recent ultimatums of the allied powers and the unsettled claims of other nations that existed when the said ultimatums were presented. At the end of each month the amount of the total income of the said two ports will be duly announced to the creditor nations and 30 per cent of that amount will be paid to them, even if the whole amount should be lost or stolen, for Venezuela in that case would be bound to pay the said 30 per cent even if she has to take

it from other custom-houses or borrow the said 30 per cent. It is further understood that the said 30 per cent is to be considered absolute and unchangeable and not to be diminished by any other agreements ever made, or ever to be made, affecting the customs receipts of the said two ports.

HERBERT W. BOWEN.

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*Mr. Bowen to Sir Michael H. Herbert.*

WASHINGTON, *January 27, 1903.*

DEAR SIR MICHAEL: Please do not fail to state in your cablegram that I can not consent to give preferential treatment to the allied powers, because, if the matter were referred to The Hague, all the creditor nations would be put on the same footing. The allied powers, therefore, should not try to press the point, as it would be unfair to do so.

Believe me, etc.

HERBERT W. BOWEN.

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*Mr. Bowen's objections.*

WASHINGTON, *January 30, 1903.*

I object to paying first the claims of the allies and the claims of the other nations afterwards because, first, I think it unjust and unfair and illegal to tie the hands of the said other nations for the period of five or six years that it would take to pay the claims of the allies; second, if I recognize that brute force alone can be respected in the collection of claims, I should encourage the said other nations to use force also; third, if the allied powers wanted preferential treatment they should have asked for it in the beginning and should not now propose it after I understood clearly that all the conditions of the allied powers had been stated. If, however, this demand for preferential treatment is raised simply as a point of honor, I am willing to agree that the entire 30 per cent be paid to the allied powers for the first month.

HERBERT W. BOWEN.

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*Mr. Bowen to Sir Michael H. Herbert.*

WASHINGTON, *February 2, 1903.*

DEAR SIR MICHAEL: I have given due consideration to your Government's proposition that two-thirds of the 30 per cent of the customs receipts of La Guaira and Puerto Cabello be given to the allied

powers and that the remaining third be paid to the peace powers. That proposition I must decline. I can not accept, even in principle, that preferential treatment can be rightly obtained by blockades and bombardments. It would be absolutely offensive to modern civilization to recognize that principle and to incorporate it into the law of nations, as it would have to be if the allied powers and the peace powers should agree to it and acknowledge it. Furthermore, that proposition is objectionable because it would keep the allied powers allied for a period of over six years. Venezuela can not, I am sure, be expected to encourage the maintenance of alliances against her. On this side of the water we want peace, not alliances.

Now, as the question of preferential treatment is the only one on which we have not agreed, I hereby propose that we leave that question to The Hague. What we have already agreed upon we can hold to and stand by. We need only to add to it that we have decided to submit the question of preferential treatment to The Hague.

If this proposition is accepted—and I do not see how it can be declined—there would be, of course, no reason to continue the blockade.

This solution of the controversy is honorable to all parties, and I beg you to communicate it to your colleagues at your earliest convenience.

I am, etc.,

HERBERT W. BOWEN.

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*Mr. Bowen to Count von Quadt.*

WASHINGTON, D. C., *February 5, 1903.*

MY DEAR COUNT QUADT: I hereby agree that Germany shall be paid in cash the same amount (£5,500—five thousand five hundred pounds) that I have agreed shall be paid to Great Britain.

I am, etc.,

HERBERT W. BOWEN.

NOTE.—This cash payment of £5,500 shall be made within thirty days after the signing of the protocol in case the cash can not be paid on the very day it is signed.

Same to Italy, except that the cash payment will be made within sixty days.

HERBERT W. BOWEN.

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*Mr. Bowen to Baron von Sternburg.*

WASHINGTON, D. C., *February 10, 1903.*

DEAR BARON VON STERNBURG: I agreed to pay each of the allied powers £5,500 in cash, with the understanding that no other cash

demand would be made. I therefore refuse absolutely to pay Germany's new demand for a cash payment of 1,700,000 bolivars and Italy's new demand for a cash payment of 2,800,000 bolivars. Our agreement was that the 1,700,000 and the 2,800,000 bolivars were to be paid out of the 30 per cent of the customs receipts at the same time and in the same manner as were to be paid the claims of all the other creditor nations. The special agreement I concluded with Germany was that I should pay cash or give a sufficient guaranty. I gave the latter, and its sufficiency has never been disputed.

I am, etc.,

HERBERT W. BOWEN.

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*Mr. Bowen to Sir Michael H. Herbert.*

WASHINGTON, D. C., *February 10, 1903.*

DEAR SIR MICHAEL: I have much pleasure in accepting the British protocol, which is very satisfactory to Venezuela, and which, in my opinion, is very creditable to you and to the British Government.

I am, etc.,

HERBERT W. BOWEN.

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*A concession to Germany.*

In consideration of the fact that Great Britain and Italy are willing to waive their claims to priority of payments in favor of Germany in regard to the payment of her first-rank claims, and also in view of the fact that there was a misunderstanding between the German embassy and German Government in regard to the interpretation of the latter's instruction prior to the arrival of the German minister, Mr. Bowen is now willing to pay to Germany, within three months of the date of the signing of the German protocol, one-half of Germany's cash demand.

This concession is made by Mr. Bowen in order to arrive at a settlement, although he considers that he would be perfectly justified, in view of the documents already signed during the negotiations, in standing on them and in absolutely refusing any cash payment other than that of the £5,500.

It is understood that the other half of the German cash demand, and also the whole of the Italian claims of the first rank, amounting to about 2,810,000 bolivars, shall not be subject to revision.

HERBERT W. BOWEN.

WASHINGTON, *February 11, 1903.*

*Explanation.*WASHINGTON, *February 14, 1903.*

The payment of the sum of £5,500 (five thousand five hundred pounds) is to be considered payment in full of the amount specified in the British protocol as "about £5,500."

MICHAEL H. HERBERT.

*Interpretation of protocols.*WASHINGTON, *February 14, 1903.*

Our interpretation of the protocols was and is that the 30 per cent of the total income of the customs receipts of La Guaira and Puerto Cabello shall begin to be set apart on the 1st day of March, 1903, and continue to be set apart through the said month, and that the first payment will be due not the 1st of March, but the 1st of April, 1903.

HERBERT W. BOWEN.

MICHAEL H. HERBERT.

E. MAYOR DES PLANCHES.

H. STERNBURG.

*Interpretation of protocols.*

BRITISH EMBASSY.

We interpret our three protocols to mean that the 30 per cent referred to therein, of the total income of the custom-houses of La Guaira and Puerto Cabello shall be delivered to the representative of the Bank of England at Caracas, and that the said 30 per cent is not assigned to any one power, but is to be retained by the said representative of the Bank of England in Caracas and paid out by him in conformity with the decision rendered by the tribunal at The Hague.

MICHAEL HERBERT.

E. MAYOR DES PLANCHES.

H. STERNBURG.

HERBERT W. BOWEN.

WASHINGTON, *February 14, 1903.*

FEBRUARY 14, 1903.

BOWEN, *Washington.*

Cablegram received. In the name of Venezuela and mine, I address to you the expression of entire gratitude for the decision and spontaniety with which you have served the cause of justice, which is the cause of humanity and only performed by superior men.

CASTRO.



*Mr. Bowen's draft protocol.***Protocol of an agreement for the reference to the Tribunal at The Hague of the question of preferential treatment.**

Italy, Great Britain, and Germany, through their respective representatives at Washington, His Excellency Nobile Edmondo Mayor des Planches, Commander of the Order of S. S. Maurice and Lazarus and the Crown of Italy, ambassador extraordinary and plenipotentiary, His Excellency Sir Michael H. Herbert, K. C. M. G., C. B., ambassador extraordinary and plenipotentiary, and Baron Speck von Sternberg, envoy extraordinary and minister plenipotentiary, have agreed upon and signed the following protocol with Herbert W. Bowen, the plenipotentiary of Venezuela:

**ARTICLE I.**

The question as to whether or not Italy, Great Britain, and Germany are entitled to preferential or separate treatment in the payment of their claims against Venezuela by reason of the fact that they blockaded the ports of Venezuela so as to compel her to make a settlement with them shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside thirty per cent of the customs revenues of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be distributed among the said nations, and its decision shall be final.

**ARTICLE II**

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the tribunal may determine.

**ARTICLE III.**

The Czar of Russia shall be invited to name and appoint three arbitrators to constitute the court that is to determine and settle the questions submitted to it under and by virtue of this protocol.

The court shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

**ARTICLE IV.**

The proceedings shall be carried on in the English language.

Except as herein otherwise stipulated the procedure shall be regulated by The Hague Convention of July 29, 1899.

## ARTICLE V.

The court shall decide how, when, and by whom the costs of this arbitration shall be paid.

## ARTICLE VI.

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this protocol.

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*Mr. Bowen to Sir Michael H. Herbert.*

THE ARLINGTON, *March 19, 1903.*

DEAR SIR MICHAEL: You understand, of course, that if, as rumor says, the allied powers are not disposed to sign The Hague protocol, Venezuela will not be bound to pay to the representative of the Bank of England, at Caracas, the 30 per cent of the customs receipts of La Guaira and Puerto Cabello, for it was agreed that if the money were paid to him he should distribute it in conformity with the decision of The Hague Tribunal. As April 1, the time for the first payment to be made, is near at hand, it would seem as if you should inform me promptly just what the intentions of the allied powers are in this matter.

Believe me, etc.,

HERBERT W. BOWEN.

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*Sir Michael H. Herbert to Mr. Bowen.*

BRITISH EMBASSY,  
*Washington, March 20, 1903.*

DEAR MR. BOWEN: I know nothing about the rumor referred to in your letter of yesterday, to the effect that the three powers are not disposed to sign The Hague protocol.

As you have obtained an extension of leave, and as you proposed that The Hague Tribunal should not meet until next September, there appears to me to be no necessity for immediate action in connection with The Hague protocol; but, as a matter of fact, I expect to be in a position to discuss it with you next week, unless I receive further instructions from my Government.

I am, etc.,

MICHAEL H. HERBERT.

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*Mr. Bowen to Sir Michael H. Herbert.*

WASHINGTON, D. C., *March 20, 1903.*

DEAR SIR MICHAEL: In answer to your letter of to-day in regard to The Hague protocol, I have the honor to say that as the British

protocol of February 13 last provides that, in default of arrangement, the question of preferential treatment shall be decided by The Hague Tribunal, it is necessary for me to know whether you intend to propose an arrangement of that question or whether it is to be submitted to The Hague Tribunal for decision. In case it is left to The Hague, the said protocol of the 13th of February provides that, pending the decision, the 30 per cent is to be paid over to the representative of the Bank of England at Caracas.

When you notify me which method of settlement you have decided upon I will notify the Venezuelan Government. If the case is not to go to The Hague it would, of course, be improper to have the 30 per cent paid over to the representative of the Bank of England at Caracas, if for no other reason than that no authority has been given to him to pay out the money except in conformity with the decision of The Hague.

I thought it would be in your interest to have this matter cleared up before the 1st of April, but if you are willing to delay, I shall not object, only, of course, I shall not be able to request the Venezuelan Government to pay the 30 per cent to the representative of Bank of England at Caracas on the 1st of April unless before that date you inform me that you have decided to submit the said question to The Hague Tribunal.

I am, etc.,

HERBERT W. BOWEN.

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*Sir Michael H. Herbert to Mr. Bowen.*

BRITISH EMBASSY,  
Washington, March 20, 1903.

DEAR MR. BOWEN: I have received your letter of to-day, and regret that my letter sent to you this morning was not clear to you.

So far as I am aware, His Majesty's Government wish to submit the question of preferential treatment to The Hague, and, unless otherwise instructed, I propose to submit the draft protocol of reference to The Hague Tribunal, with certain amendments. to you some time next week.

I am, etc.

MICHAEL H. HERBERT.

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*Mr. Bowen's draft protocol, as amended by Sir Michael H. Herbert.*

[Received April 2, 1903.]

Whereas protocols, the texts of which are given in an annex to the present agreement, have been signed between Great Britain, Germany, Italy, the United States of America, France, Spain, Belgium, the Netherlands, Sweden and Norway, and Mexico on the one

hand, and Venezuela on the other hand, containing certain conditions agreed upon for the settlement of claims against the Venezuelan Government;

And whereas certain further questions arising out of the action taken by the Governments of Great Britain, Germany, and Italy in connection with the settlement of their claims, have not proved to be susceptible of settlement by ordinary diplomatic methods;

And whereas the powers interested are resolved to determine these questions by reference to arbitration in accordance with the provisions of the convention for the pacific settlement of international disputes, signed at The Hague on the 29th July, 1899.

The said powers have, with a view to carry out that resolution, authorized their representatives, that is to say—

For Great Britain, etc., to conclude the following agreement:

#### ARTICLE I.

The question as to whether or not Great Britain, Germany, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and its decision shall be final.

In deciding the questions of preferential or separate treatment to be granted to the blockading powers the tribunal shall have regard to the resources of Venezuela other than the 30 per cent of the customs revenues so set aside, which may be available for the payment of claims of other powers.

#### ARTICLE II.

If preferential or separate treatment is not given to Great Britain, Germany, and Italy, the tribunal may consider whether any and what compensation should be made by Venezuela, out of the thirty per cent of the customs revenues set aside, to these powers for the expense which they have incurred in connection with the blockade.

#### ARTICLE III.

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the tribunal may determine.

## ARTICLE IV.

The Emperor of Russia shall be invited to name and appoint from the members of the permanent court of The Hague three arbitrators to constitute the tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement. None of the arbitrators so appointed shall be a subject or citizen of any of the signatory powers.

This tribunal shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

## ARTICLE V.

The proceedings shall be carried on in the English language.

Except as herein otherwise stipulated the procedure shall be regulated by the convention of The Hague of July 29, 1899.

## ARTICLE VI.

The tribunal shall, subject to the general provision laid down in article 57 of the international convention of July 29, 1899, also decide how, when, and by whom the costs of this arbitration shall be paid.

## ARTICLE VII.

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this agreement.

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*Mr. Bowen to Sir Michael H. Herbert.*

WASHINGTON, D. C., *April 2, 1903.*

DEAR SIR MICHAEL: Your amendments leave unchanged about nine-tenths of the articles of my draft protocol. I infer, therefore, that you and your colleagues accept all of my said protocol except the remaining one-tenth. The nine-tenths on which we all agree state substantially and clearly the subjects we decided to submit to The Hague tribunal, and would in themselves constitute a very fair and equitable protocol. Some of your amendments I am willing, however, to accept. I see no objection whatever to leaving out of article I the words "by reason of the fact that they blockaded the ports of Venezuela so as to compel her to make a settlement with them," nor to substituting the words "divided between the blockading powers on the one hand and the creditor powers on the other hand" for my words "distributed among the said nations." The new paragraph is objectionable, however, that you add to Article I to wit—

In deciding the question of preferential or separate treatment to be granted to the blockading powers, the tribunal shall have regard to the resources of

Venezuela other than the 30 per cent of the customs revenues so set aside, which may be available for the payment of claims of other powers.

and my objections to it are the same as are those I have for your amendment which you offer in the form of an entirely new article, designated by you as Article II, and thus worded:

If preferential or separate treatment is not given to Great Britain, Germany, and Italy, the tribunal may consider whether any and what compensation should be made by Venezuela out of the 30 per cent of the customs revenues set aside to these powers for the expense which they have incurred in connection with the blockade.

My said objections are these:

I. They constitute new demands or claims, and consequently can have no place in this protocol nor in this controversy.

II. You are precluded from gaining recognition and favor for them by Article V of the British protocol of February 13, 1903, which states that the 30 per cent of the customs revenues of La Guaira and Puerto Cabello are to be assigned for the payment of the British claims specified in Article III of the said protocol and similar claims preferred by other governments, and are to be alienated to no other purpose. It is evident from that agreement that no part of the said 30 per cent can be assigned to pay these new demands or claims.

III. By the terms of the British protocol of February 13, 1903, the only questions that are to be submitted to The Hague Tribunal are those relating to the distribution of the said 30 per cent and to preferential or separate treatment. These new demands or claims, therefore, can not be submitted to The Hague Tribunal.

IV. Inasmuch as the German and Italian protocols of February 13, 1903, contain the same provisions in regard to this matter as the said British protocol does, and as all three of the said protocols are duly signed and sealed, they must be considered binding on all the parties thereto.

V. The said protocols of February 13, 1903, being binding on all parties thereto, were accepted as one of the bases for negotiating protocols with the other powers having claims against Venezuela. Your new demands or claims must, for that reason alone, be denied recognition and favor.

In my Article III I have no objection to your substituting the word "Emperor" for "Czar," and the words "from the members of the Permanent Court of The Hague three arbitrators to constitute the tribunal which" for the words "three arbitrators to constitute the court that;" nor to your adding the sentence "none of the arbitrators as appointed shall be a subject or citizen of any of the Signatory Powers."

I should like to amend the first sentence of my Article IV so that after the words "the proceedings shall be carried on in the English



language" the words shall appear "but arguments to the tribunal may be made in any other language also." I trust you will have no objection to that amendment, and I ask that you accept it.

I prefer that my Article V should not contain your amendment "subject to the general provision laid down in article 57 of the international convention of July 29, 1899," as I hold that the tribunal ought itself to decide, without any restriction, how, when, and by whom the costs of the arbitration shall be paid.

As regards your preamble, I have to ask that you insert the words "except as herein otherwise stipulated" between the words "accordance" and "with" in the third line of the third paragraph. The preamble, thus amended, will be satisfactory to me, and I accept it, with the understanding, however, that when the definitive protocol shall have been signed by you and your Italian and German colleagues and myself, the other powers having claims against Venezuela may join as parties to the arbitration, and not until then.

I am, etc.,

HERBERT W. BOWEN.

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*Sir. Michael H. Herbert to Mr. Bowen.*

BRITISH EMBASSY,  
Washington, April 3, 1903.

DEAR MR. BOWEN: Referring to our interview of this morning, I find, on looking up my papers, that I sent a telegram to my Government on February 24 recording a conversation which I had with you on that day when you handed me your draft protocol for reference of the question of preferential treatment to The Hague Tribunal. According to this telegram I informed you that I had no instructions to draw up the protocol here, and that it was possible that Lord Lansdowne would prefer the terms of reference set forth in my note to Mr. Hay of February 6.

You replied that you were ready to accept any alterations which His Majesty's Government might suggest, and you asked me to telegraph the terms of your protocol to Lord Lansdowne, which I accordingly did.

I am, etc.,

MICHAEL H. HERBERT.

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*Mr. Bowen to Sir Michael H. Herbert.*

WASHINGTON, D. C., April 3, 1903.

DEAR SIR MICHAEL: In answer to your kind letter of this date, I have the honor to inform you that the most I have ever said to you regarding amendments to either the protocol of the 13th of February

or The Hague protocol was that I should be pleased to accept any unimportant amendments your Government may suggest.

You never gave me a copy of your note of February 6 to Mr. Hay, and I have never possessed a copy of it. I can not be bound by what you wrote to Mr. Hay on February 6, for, if I remember rightly, your letter to him of that date was a proposition that the question of preferential treatment be left to the President of the United States to decide. That proposition I opposed the moment your said letter was read to me. There the matter ended; and I am surprised that you should now intimate that I am in any way bound by the terms of a proposition I declined to accept. I am also greatly surprised that you should have interpreted anything I said as indicating my willingness to give you or your allies or your respective governments carte blanche in regard to amending my protocols; for my principal and openly declared aim has been to prevent any new demands or claims from being brought forward after our agreements have been made. I am very sorry that you should have misunderstood me, and I am,

Yours, very truly,

HERBERT W. BOWEN.

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*Mr. Bowen to Sir Michael H. Herbert.*

WASHINGTON, D. C., April 25, 1903.

DEAR SIR MICHAEL: During our negotiations I have been not only willing, but also anxious, to concede to you and your colleagues everything that I thought you could fairly and justly expect of me. In pursuance of that policy I believe that I can now remove the only obstacle that prevents us from signing The Hague protocol. All that is necessary, it would seem, to accomplish that purpose is to insert at the end of Article I before the words "and its decision shall be final" the words "and in making such adjudication the said tribunal shall consider any preferences or pledges of revenue enjoyed by any of the creditor powers."

That concession I consider equitable and also sufficient.

Amending, then, my draft protocol in conformity with our previous agreements and with this concession, I have rewritten the protocol and I send a copy of it to you herewith, trusting that you and your colleagues will consent to sign it with me without delay.

Believe me, etc.,

HERBERT W. BOWEN.

*The Hague protocol, amended as stated in the preceding letter.*

Whereas, etc.

#### ARTICLE I.

The question as to whether or not Great Britain, Germany, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside thirty per cent of the customs revenues of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers, on the one hand, and the other creditor powers, on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and in making such adjudication the said tribunal shall consider any preference or pledges of revenue enjoyed by any of the creditor powers, and its decision shall be final.

#### ARTICLE II.

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the tribunal may determine.

#### ARTICLE III.

The Emperor of Russia shall be invited to name and appoint from the members of the Permanent Court of The Hague three arbitrators to constitute the tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement. None of the arbitrators so appointed shall be a subject or citizen of any of the signatory powers.

This tribunal shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

#### ARTICLE IV.

The proceedings shall be carried on in the English language, but arguments may be presented in any other language also.

Except as herein otherwise stipulated, the procedure shall be regulated by the Convention of The Hague of July 29, 1899.

#### ARTICLE V.

The tribunal shall, subject to the general provision laid down in article 57 of the International Convention of July 29, 1899, also decide how, when, and by whom the costs of this arbitration shall be paid.

ARTICLE VI.

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this agreement.

*Mr. Bowen to Baron von Sternburg.*

MAY 2, 1903.

The latter part of Article I not being satisfactory to Baron von Sternburg, Mr. Bowen proposed the following amendment:

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal in that case shall consider any preference or pledges of revenue enjoyed by any of the creditor powers, and shall so decide the question of distribution that no power shall obtain preferential treatment, and its decision shall be final.

*Mr. Bowen to the representatives of the allies.*

WASHINGTON, D. C., May 8, 1903.

To Their Excellencies Signor MAYOR DES PLANCHES,  
Sir MICHAEL H. HERBERT, and  
Baron VON STERNBURG.

DEAR SIRs: Our negotiations ended, I thank you for having done all in your power to conclude them expeditiously and fairly.

The work we have done will tend without doubt to promote peace and good will, not only among the governments and peoples we have represented, but also among all mankind.

With kindest and friendliest regards, etc.,  
HERBERT W. BOWEN.

*List of protocols for the settlement of claims against Venezuela.*

| Name of claimant nation. | Date of signature. | Umpire to be selected by—           |
|--------------------------|--------------------|-------------------------------------|
| Great Britain.....       | Feb. 13, 1903      | The President of the United States. |
| Germany.....             | do.....            | Do.                                 |
| Italy.....               | do.....            | Do.                                 |
| United States.....       | Feb. 17, 1903      | The Queen of the Netherlands.       |
| Mexico.....              | Feb. 23, 1903      | The King of Spain.                  |
| France.....              | Feb. 27, 1903      | The Queen of the Netherlands.       |
| The Netherlands.....     | Feb. 28, 1903      | The President of the United States. |
| Belgium.....             | Mar. 7, 1903       | The Queen of the Netherlands.       |
| Sweden and Norway.....   | Mar. 10, 1903      | The King of Spain.                  |
| Spain.....               | Apr. 2, 1903       | The President of Mexico.            |

| Names of claimant nations.       | Date of signature. | Protocol.           |
|----------------------------------|--------------------|---------------------|
| Venezuela and Italy.....         | May 7, 1903        | The Hague protocol. |
| Venezuela and Great Britain..... | do.....            | Do.                 |
| Venezuela and Germany.....       | do.....            | Do.                 |

[Translation.]

REPUBLICANA ARGENTINA MINISTERIO DE  
RELACIONES EXTERIORES Y CULTO,  
*Buenos Aires, December 29, 1902.*

MR. MINISTER: I have received your excellency's telegram of the 20th instant in reference to the recent occurrences between the Government of the Republic of Venezuela and those of Great Britain and Germany. According to the report of your excellency the origin of the conflict should be attributed in part to the injuries which the subjects of the claimant nations have suffered during the revolutions and wars which recently have taken place in the territory of that Republic, and also in part to the fact that certain payments of the external debt of the State have not been met at their proper time.

Laying aside the claims of the first kind in respect of whose adequate appreciation the laws of the respective nations should always be considered, this Government has esteemed it opportune to transmit to your excellency certain considerations in regard to the compulsory demand of payment of the public debt, as suggested by the acts that have taken place.

It is to be noticed in the first instance, with regard to this, that the capitalist who supplies any money to a foreign State always takes into consideration the resources of the country and the more or less probabilities that the obligations contracted shall be fulfilled without difficulty.

Because of this every Government obtains different credit in view of its grade of civilization and culture and its conduct of affairs, and these circumstances are measured and weighed before the contracting of any loan, and serve to make its conditions more or less onerous and according to the exact data that on such subjects are kept on file by all bankers. Besides, the creditor knows that he contracts with a sovereign entity and that it is an inherent condition of all sovereignty that executive proceedings against it can not be entered into or carried out, as that form of demand of payment would compromise its very existence, making its independence to disappear as likewise the action of the respective Government.

Among the fundamental principles of international public law that mankind has sanctioned, one of the most precious is the one which determines that all the States, whatever be the forces that they may dispose of, are entities *de jure*, perfectly equal among themselves and reciprocally deserving for that reason to the same amount of consideration and respect.

The acknowledgment of the debt, the liquidation of its amount, may and should be made by the nation without injury to its primary rights as a sovereign entity, but the compulsive and immediate

demand of payment at a given moment by means of force would not produce other than the ruin of the weaker nations and the absorption of their government, together with all its inherent faculties by the powerful nations of the earth. Different are the principles that have been proclaimed in this American continent.

The illustrious Hamilton has said that "the contracts between a nation and private individuals are binding according to the conscience of the sovereign and can not be the object of compulsive force; they do not confer any right whatever for action outside of the sovereign will."

The United States have gone very far in that sense. In fact the eleventh amendment to its Constitution sets forth, with the unanimous assent of its people, that "the judicial power of the United States shall not be construed to extend to a suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects or any foreign State." The Argentine Republic has made its provinces subject to prosecution and even has sanctioned the principle that the nation itself can be prosecuted before the supreme court in the case of contracts entered into with private individuals.

What it has not established, what it could in nowise admit, is that, once that sentence has been passed determining the amount to which she is liable, she should be deprived of the faculty of electing the form and time of such payment, in respect of which she has as great or greater interest than the creditor himself, because therein is bound up her credit and collective honor.

This is not on any account a defense of bad faith, of irregularities and of deliberate and voluntary insolvency. It is simply to protect the decorum of international public entity which can not be dragged thus into war, with harm to the lofty ends that determine the existence and liberty of nations.

The acknowledgement of the public debt, the fixed obligation of paying it is not, on the other hand, a declaration destitute of value because recovery can not be effected by means of violence. The State maintains and upholds its capacity to do so, and sooner or later the obscure conditions resolve themselves, the resources augment, the common aspirations of equity and justice prevail, and the most protracted obligations are met and satisfied. Therefore the sentence that sets forth the obligations to pay a debt, be it passed by the courts of the nation, or by an international arbitration tribunal, that express the permanent desire of justice as the fundament for the political relations of nations, constitutes an indisputable title which can not be compared with the uncertain right of one whose credits are not acknowledged and who finds himself forced to recur to coercitive action as a means of obtaining a settlement. As these sentiments of



justice, of loyalty, and of honor are the ones that animate the Argentine people and that have inspired at all times its policy, your excellency will understand that it has felt alarmed on learning that the failure to meet the service of the public debt of Venezuela has been assigned as one of the causes which have led to the seizure of her fleet, the bombardment of one of her ports, and the warlike blockade rigorously established along her coast. If these proceedings were to be definitely adopted they would establish a dangerous precedent for the security and the peace of the countries on this side of America.

The recovery of loans by military methods supposes a territorial occupation to render it effective, and a territorial occupation signifies the suppression or subordination of local government in the countries wherein it is extended.

Such a condition to all appearances contradicts visibly the principles oftentimes proclaimed by the nations of America, and especially so the Monroe Doctrine upheld and defended at all times with so much zeal by the United States—a doctrine to which the Argentine Republic before this has solemnly adhered.

Among the principles enunciated by the memorable message of December 2, 1823, there are two great declarations which specially refer to these republics, namely :

The American continents by the free and independent conditions which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European power ; and, acknowledged as has been the independence of the governments of America, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States.

The abstention from possession of further colonial dominions in the territories of this continent has been accepted on various occasions by the statesmen of England. To their sympathy, it may be said, that the Monroe Doctrine owes the great success it achieved when it had only just been promulgated. But in these latter days there has been observed a marked tendency among publicists and in the diverse manifestations of European opinion to signal out these countries as an ample field for future territorial expansions. Great thinkers have insinuated the convenience of directing toward this end the great efforts which the principal European powers have applied to the conquest of barren regions with inclement climate in the most remote parts of the world. Many are the European writers who point out the territories of South America with their great wealth, their bright skies and propitious climate adapted to every production, as the proper field wherein the European powers who have already at hand the arms and implements of conquest, shall dispute the predominance in the course of this century.

An expansive human tendency, heated thus by the suggestions of public opinion and the press may, at any moment, take an aggressive turn, even against the wish of the present-day governing classes. And it will not be denied that the most simple way of obtaining control and of supplanting local authorities by the Governments of Europe, is precisely to be found by means of financial interventions, as could be shown by numerous examples. We do not pretend in any way that the South American nations should remain on any account exempt from the responsibilities of every order that the infractions of international law involve upon civilized communities. We do not pretend, neither can we pretend that these nations shall occupy an exceptional position in their relations with the European powers, who have the undoubted right to protect their subjects as amply as in any other part of the globe, against prosecution or from any injustice they may have been victims of. The only thing that the Argentine Republic maintains, and which she would see with great satisfaction consecrated in view of the events that have occurred in Venezuela, by a nation such as the United States that possesses so great authority and power, is the principle already accepted that there can not be European territorial expansion in America or oppression of the peoples of this continent, because their unfortunate financial condition might oblige one of them to put off the fulfillment of its obligations. That is to say, that the principle which I should like to see acknowledged is that a public debt can not give rise to an armed intervention, and much less to the material occupation of the soil of American nations by any European power.

The loss of prestige and the discredit of the States that fail to meet the claims of their legitimate creditors, bring about difficulties of such a magnitude that there is no necessity for a foreign intervention to aggravate by oppression the temporary calamities consequent on insolvency.

The Argentine Republic might cite her own experience to prove how unnecessary armed interventions are in such cases.

The service of the English debt of 1824 was spontaneously resumed by her after an interruption of thirty years brought about through the state of anarchy and the political convulsions that during that period disturbed the country, and all arrears were scrupulously paid, together with all interests, without the creditors having taken any action whatever to obtain this.

At a later period a series of events and of financial embarrassments altogether beyond the control of her administrators, placed her, for a time in the condition of having to suspend again temporarily the service of the foreign debt. Nevertheless she had the firm and decided resolve to resume payments as soon as the circumstances should permit it, and so she did, in fact, shortly afterward, at the cost of

enormous sacrifices, but by her own free and spontaneous will, and without the intervention or the injunction of any foreign power.

And it is due her most scrupulous, honest, and correct proceedings, to her high sense of equity and justice, clearly demonstrated, that the difficulties through which she has passed, instead of impairing her credit, have helped to increase it in the European markets. It may be stated with entire certainty that such satisfactory result would not have been attained if the creditors had deemed it expedient to intervene in a violent manner at the period of crisis in her finances, which had recovered by their own virtue. We do not fear, neither can we fear, a repetition of similar circumstances.

Therefore, at this present moment, we are not actuated by any egotistical sentiment, neither do we seek our own benefit when expressing a wish that the public debt of the States shall not serve as a pretext for military aggression against them. Moreover, we do not entertain in respect of the European nations any hostile sentiment. On the contrary, we maintain with all of them the most cordial relations ever since our emancipation, more especially with England, to whom we have recently given the greatest proof of confidence that her sense of justice and equanimity can inspire, in submitting to her decision the most important of our international questions, which she has just closed with the fixing of our boundaries with Chile, after a controversy that has lasted for over sixty years.

We well know that wherever England goes she carries civilization and extends the benefits of political and civil liberties. For this we bear her in esteem, which does not mean to say that we would adhere with equal sympathy to her policy in the improbable event that it would trend in the direction of oppressing the nations of this continent, whose struggle for their progress, who have already conquered the greatest difficulties, and who will eventually triumph to the honor of democratic institutions. Long is the road over which the South American nations may yet have to travel; but they have sufficient faith and the required energy to attain their thorough development, helping each other as they go along.

And it is by this sentiment of continental confraternity and by the strength that always springs up from the moral support of a whole people that I address myself to you, Mr. Minister, in compliance with instructions from his excellency the President of the Republic, so that you shall convey to the Government of the United States our manner of appreciating the events, in the unfolding of which they are to take so important a part, in order that they may consider it as the sincere expression of the sentiments of a nation that has faith in its destinies and in those of the whole continent at the head of which stands the United States, realizing ideals and furnishing examples.

DEPARTMENT OF STATE,  
*February 17, 1903.*

MY DEAR MR. MINISTER: I inclose a memorandum in regard to Mr. Drago's instruction of December 29, 1902, a copy of which you left with me.

I am, my dear sir, very truly, yours,

JOHN HAY.

SEÑOR MARTÍN GARCÍA MÉROU.

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*Memorandum.*

Without expressing assent to or dissent from the proposition ably set forth in the note of the Argentine minister of foreign relations, dated December 29, 1902, the general position of the Government of the United States in the matter is indicated in recent messages of the President.

The President declared in his message to Congress, December 3, 1901, that by the Monroe Doctrine "We do not guarantee any State against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power."

In harmony with the foregoing language, the President announced in his message of December 2, 1902:

"No independent nation in America need have the slightest fear of aggression from the United States. It behooves each one to maintain order within its own borders and to discharge its just obligations to foreigners. When this is done, they can rest assured that, be they strong or weak, they have nothing to dread from outside interference."

Advocating and adhering in practice in questions concerning itself to the resort of international arbitration in settlement of controversies not adjustable by the orderly treatment of diplomatic negotiations, the Government of the United States would always be glad to see the questions of the justice of claims by one State against another growing out of individual wrongs or national obligations, as well as the guaranties for the execution of whatever award may be made, left to the decision of an impartial arbitral tribunal before which the litigant nations, weak and strong alike, may stand as equals in the eye of international law and mutual duty.

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D. P. E. No. 711.]

MINISTRY OF FOREIGN RELATIONS  
OF THE U. S. OF VENEZUELA,  
*Caracas, June 1, 1903.*

MR. MINISTER: I hereby have the honor to comply with the request which your excellency was pleased to address to me in your polite note of the 26th ultimo, relative to the antecedents in Venezuela of the general principle of arbitration and to the various instances in which the Republic has put it in practice.

When it formed part of the political State that was called Colombia, which was subdivided in 1830, it categorically assented to the principle in question, since, in the treaties concluded with Peru, Chile,

Mexico, and the United Provinces of Central America, the practice of arbitration was provided for with those Republics in the cases in which it could at that time be considered applicable.

The first of the treaties above referred to was signed at Lima, July 6, 1822, and in its ninth article arbitration was, by implication, provided for. That article was as follows:

The demarcation of the precise boundaries which are to divide the territory of the Republic of Colombia from that of the State of Peru, shall be settled by a special agreement after the next constitutional congress of Peru shall have authorized the executive of that State to settle this point, and such differences as may arise on this subject shall be terminated by such conciliatory and peaceable means as become two sister and confederate nations.

In the treaty concluded with Chile and signed at Santiago November 20, 1822, an article (the 14th) was incorporated, which was worded as follows:

As soon as this great and important object (the union, league, and confederation of the States of Spanish-America) shall have been attained, a general assembly of the American States shall convene; it shall be composed of their plenipotentiaries, whose duty it shall be to cement more firmly and durably the intimate relations that should exist among all of them, and it shall serve them as an adviser in their serious conflicts, as a point of contact in their common dangers, as a faithful interpreter of their public treaties when difficulties arise, and as an arbitrator and conciliator in their disputes and differences.

The treaty with Mexico was concluded October 3, 1823, and its fourteenth article was worded exactly as in the one above copied.

In the other (that concluded with the United Provinces of Central America, signed at Bogota March 15, 1845) the article relative to the subject of arbitration was the seventeenth, and its text was precisely the same as the two above mentioned.

As is seen, the design was to constitute a kind of permanent tribunal, with powers extending to everything that might promote or secure perfect harmony among the contracting States.

In all those treaties it was moreover provided that the union, league, and confederation should in no wise interfere with the exercise of their national sovereignty by the contracting parties, both as regarded their laws and the establishment and form of their Government, and also with respect to their relations with other foreign States.

When Venezuela signed, in her own name, the treaty of July 23, 1842, with the Republic of New Granada, she adhered to the principle of arbitration, which both had professed when they formed part of the same political organization. Article 4 of the treaty was worded as follows:

If, unfortunately, the relations of friendship and harmony which now happily exist between the two Republics, and which it is hereby endeavored to render per-

manent, shall at any time be interrupted, the high contracting parties solemnly pledge themselves never to have recourse to the sad expedient of arms before they have exhausted that of negotiation, and have asked and given explanations concerning the offenses which the one party shall consider that it has received from the other, or concerning such differences as may arise between them, and until due satisfaction shall have been expressly refused after a friendly or neutral power, selected as arbitrator, shall have decided, in view of the argument or statement of reasons and of the reply of the one and the other party concerning the justice of the demand.

In the treaty of friendship, commerce, and navigation concluded by Venezuela with the Kingdom of Italy, June 19, 1861, there is an article (the fifth) the final portion of which distinctly provides for recourse to arbitration. That article says:

For the greater security of the citizens and subjects of both the high contracting parties, it has been stipulated that if, unfortunately, friendship between the two contracting parties shall be interrupted, such citizens and subjects residing in the territory of the other shall have the right to remain there and to continue, without any interruption whatever, to carry on their occupations, provided that they shall behave peaceably and obey the laws of the country. Their effects and properties, whether they are intrusted to private individuals or to the State, shall not be liable to seizure or sequestration, or to any burdens other than those which are imposed on such effects or properties belonging to citizens and subjects of the country where they reside. However, with a view to avoiding so great a calamity, the contracting parties have stipulated that, if their mutual relations of friendship shall unfortunately be interrupted, they shall never have recourse to the fatal use of arms unless the difference shall previously have been submitted to the decision of a friendly and neutral nation, whose decision shall be obligatory upon them.

On the 20th of May, 1882, a treaty was concluded with Spain, whose fourteenth article was as follows:

If, which is not to be expected, any difference shall arise between Venezuela and Spain which can not be amicably settled by the usual and ordinary means, the two high contracting parties agree to submit the settlement of the difference to the arbitration of a third power friendly to both, which power shall be proposed and accepted by common consent.

When the treaty of August 27, 1883, was concluded with the Republic of El Salvador, care was taken to incorporate the principle of arbitration in it by means of a special article (the forty-second), which reads as follows:

The high contracting parties solemnly pledge themselves to settle all their difficulties by way of diplomacy, without having recourse to arms or hostilities for any reason whatever, and all questions of a serious nature which may give rise to war, and concerning which no agreement can be reached, shall be submitted to the decision, from which there shall be no appeal, of one or more arbitrators appointed by common consent. If both Governments shall not agree upon the designation of an arbitrator, the aggrieved Government shall propose to the Government which is charged with committing the offense a triad of persons, in order that within the space of six months, reckoned from



the date of the notification, it may select therefrom the arbitrator who is to settle the dispute.

On the 1st of March, 1884, a treaty was concluded with the Kingdom of Belgium, in the second article of which the principle of arbitration was likewise established, as follows:

If any difference that can not be amicably settled shall arise between Venezuela and Belgium, the two high contracting parties agree to submit the settlement of the dispute to the arbitration of a friendly power, proposed and accepted by common consent.

In the differences which have arisen in relation to the ownership of territory, Venezuela has always sought to reach an agreement with the nation concerned by means of arbitration. She submitted to arbitration the differences with Holland relative to the possession of Bird Island (La Isla de Aves) and likewise the boundary question with Colombia, and the question concerning the demarcation with British Guiana. She has, moreover, recently proposed to submit to the decision of arbitrators her difference with Great Britain relative to Duck Island (El Islote de Patos), which she (Venezuela) considers that she lawfully owns.

The treaty whereby the case of Bird Island was submitted to arbitration was concluded at Caracas August 5, 1857, and its first article said:

The question of the right of dominion and sovereignty over Bird Island shall be submitted to the arbitration of a friendly power previously selected by common consent.

Although said convention also had reference to the settlement of other matters, it is clearly seen that its first article referred, essentially, to the enforcement of the principle of arbitration in one of the pending questions. The arbitrator selected was Her Majesty Isabel II, Queen of Spain, who rendered a decision in favor of the Republic, in the palace at Madrid, on the 30th day of June, 1865.

The controversy relative to our boundaries with Colombia was submitted to the decision of His Majesty the King of Spain, by a treaty which was signed at Caracas September 14, 1881, the first article of which said:

The said high contracting parties submit to the judgment and decision of His Majesty, the King of Spain, as an arbitrator *de jure*, the points of difference in the aforesaid boundary question, with a view to obtaining a final decision from which there shall be no appeal, according to which all the territory that belonged to the jurisdiction of the former captaincy general of Caracas by royal acts of the former sovereign, until 1810, shall continue to be territory subject to the jurisdiction of the Republic of Venezuela, and all that, by similar acts at the same time, belonged to the jurisdiction of the viceroyalty of Santa Fe, shall continue to be territory of the present Republic called the United States of Colombia.

The boundaries of Guiana formed the subject of the treaty which was signed at Washington February 2, 1897, and in which the following agreement was made (article 1):

A court of arbitration shall be appointed immediately to determine the boundary line between the United States of Venezuela and the colony of British Guiana.

In the matter of pecuniary claims, Venezuela has more than once appealed to the decisions of commissions of arbitration to decide the character of the claims presented against her. With the United States she concluded a convention of that nature, April 25, 1866, which, in its first article, said:

All claims on the part of corporations, companies, or individuals, citizens of the United States, upon the Government of Venezuela, which may have been presented to their government or to its legation in Caracas, shall be submitted for examination and decision to a mixed commission, consisting of two members, one of whom shall be appointed by the Government of the United States and the other by that of Venezuela. In case of death, absence, resignation, or incapacity of either of the commissioners, or in the event of either of them omitting or ceasing to act, the Government of the United States or that of Venezuela, respectively, or the minister of the United States in Caracas, by authority of his Government, shall forthwith proceed to fill the vacancy.

The commissioners so named shall meet in the city of Caracas within four months from the exchange of the ratifications of this convention, and before proceeding to business they shall make solemn oath that they will carefully examine and impartially decide according to justice, and in compliance with the provisions of the convention, all claims submitted to them, and such oath shall be entered on the record of their proceedings.

The commissioners shall then proceed to appoint an umpire to decide upon any case or cases concerning which they may disagree, or upon any point of difference that may arise in the course of their proceedings. If they can not agree in the selection, the umpire shall be named by the diplomatic representative of either Switzerland or of Russia, in Washington, on the previous invitation of the high contracting parties.

Subsequent charges were made against the convention of 1866, which were so grave that its proceedings were set aside, and another treaty with the United States had to be concluded on the 5th of December, 1885, for the submission of the claims to which the first treaty had had reference, to a new mixed commission. Article I of the new treaty was as follows:

The general stipulations of the convention of April 25, 1866, between the contracting parties, are hereby revised with such alterations as are required in conformity with the aforesaid joint resolution of the Congress of the United States, and with such further modifications as are deemed necessary for the certain and speedy accomplishment of the ends in view, and for the reciprocal protection of the interests of the high contracting parties as hereinafter provided.

Article 2 which provided for the organization of the mixed commission, was worded thus:

All claims on the part of corporations, companies, or individuals, citizens of the United States, upon the Government of Venezuela, which may have been presented to their Government or to its legation at Caracas before the 1st day of August, 1868, and which, by the terms of the aforesaid convention of April 25, 1868, were proper to be presented to the mixed commission, organized under said convention, shall be submitted to a new commission consisting of three commissioners, one of whom shall be appointed by the President of the United States of America, one by the Government of the United States of Venezuela, and the third shall be chosen by these two commissioners; if they can not agree within ten days from the time of their first meeting, as hereinafter provided, then the diplomatic representative of either Russia or Switzerland at this capital shall be requested by the Secretary of State and the Venezuelan minister at Washington to name the third commissioner.

In case of the death, resignation, or incapacity of any of the Commissioners, or in the event of any of them omitting or ceasing to act, the vacancy shall be filled within three months by naming another Commissioner in like manner as herein provided for the original appointment.

With the same Republic of the United States there was signed on the 19th of January, 1892, a treaty for the submission to the decision of a Mixed Commission of Arbitration of the claim of the so-called "Steam Transportation Company of Venezuela" (Hancox).

Its first article read thus:

The high contracting parties agree to submit to arbitration the question whether the Government of the United States of Venezuela ought to pay any indemnity to the Government of the United States of America, and, if so, the amount thereof, for the alleged unjust seizure, detention, and use in war or in anything else, of the steamers *Heroe*, *Nutrias*, and *San Fernando*, belonging to the Venezuela Steam Transportation Company, a corporation established under the laws of the State of New York and a citizen of the United States, and for the imprisonment of its employees, citizens of the United States.

With the French Republic, in addition to the fact that a stipulation was contained in the convention of November 26, 1885, for the submission of the claims of a certain period to a commission consisting of two members only, one of whom was designated by each party, it was agreed by means of a protocol signed at Paris, February 19, 1903, to refer to a commission of arbitration for examination and decision the claims of 1902 and those based upon acts committed previously to May 23, 1899. The agreement was as follows:

ARTICLE I. At the same time that they shall appoint their ministers at Paris and Caracas, the Venezuelan Government and that of France shall each designate an arbitrator, and shall select as an umpire His Excellency F. de León y Castillo, Marquis of Muni, ambassador extraordinary and plenipotentiary of His Majesty, the King of Spain, near the President of the French Republic.

The first two arbitrators shall meet at Caracas immediately after the delivery of his credentials by the minister of France to the President of the United States of Venezuela, for the purpose of examining, in concert, the applications for indemnity presented by French citizens for damages suffered in Venezuela

by reason of the revolutionary occurrences of 1892. Such applications for indemnity as can not be amicably settled by these two arbitrators shall be submitted by them to the umpire.

If nothing shall have been definitely settled, either by the two arbitrators or by the umpire, within the period of one year, reckoned from the arrival of the French arbitrator at Caracas, the Venezuelan Government shall deliver to the French Government, for distribution by it among the parties concerned, one million bolivars of the diplomatic debt, with interest at 3 per cent, by which payment all the claims based upon the revolutionary occurrences of 1892 shall be definitely settled.

ARTICLE 2. Claims for indemnity other than those mentioned in article 1, but based upon acts committed previously to May 23, 1899, shall be examined in concert by the minister of foreign relations of Venezuela and by the minister of France at Caracas. If, within the space of six months, reckoned from the delivery of the credentials of the minister of France at Caracas, they shall not agree concerning the amount of indemnity to be granted, the claims shall be submitted by them to the umpire designated in the foregoing article.

The minister of foreign relations of Venezuela and the minister of France at Caracas may delegate, each one in that which concerns him, the execution of the foregoing provisions to the arbitrator appointed by his Government.

If several claims for indemnity, based upon different acts, shall be presented by the same claimant, and it shall be proper for one of them to be submitted to the procedure established in this article, the other claims shall be joined with it, in order that they may form the subject of a single settlement.

It is understood that this proceeding, like that adopted for the claims of 1892, is only adopted by way of exception, and that it does not invalidate the convention of November 26, 1885.

Such are, up to the year 1902, the antecedents of a practical or concrete nature presented in Venezuela by the general principle of arbitration. Furthermore, the Republic incorporated as long ago as 1864 the same principle in its constitutional law. In the constitution promulgated April 22, 1864, this principle was made the subject of an article (the one hundred and twelfth), which read as follows:

In international treaties of commerce and friendship a clause shall be inserted to the effect that all differences between the contracting parties must be decided, without an appeal to arms, by the arbitration of a friendly power or powers.

In the constitution of May 27, 1874, that article remains in the same form; and in that of April 27, 1881, and in that of April 16, 1891, it was likewise maintained, a change being made merely in the number of the article in which it appeared, which was 109 in both. In that of June 21, 1893, it was included in article 142, as follows:

In international treaties a clause shall be inserted to the effect that all differences between the contracting parties shall be decided without an appeal to arms, by the arbitration of one or more friendly powers.

A form identical with the foregoing was given to it in the constitution of March 29, 1901, which is the one that is now in force. The article in which it was included is the 133d.

As if to confirm its adhesion to the principle, the Republic has proclaimed and sustained it, whenever it has been able to do so, in

international compacts. Testimony of this is furnished by the American Congress held at Lima in 1864-5, by the congress of jurists which met ten years afterwards in the same capital, and by the peace congress which met at Paris during the Exposition of 1889. With the same decision it endeavored, for its part, to give immediate effect to the treaty, relative to the same principle, which was signed April 28, 1890, by ten of the delegates to the first Washington conference.

The foregoing statement seems to meet the wishes expressed by your excellency in your note of May 26. However, if your excellency shall deem any further information on the subject to be necessary, I shall take great pleasure in furnishing it, if it is possible for me to do so.

Be pleased, your excellency, to accept a renewed assurance of my highest and most distinguished consideration.

ALEJANDRO URBANEJA.

His Excellency HERBERT W. BOWEN,  
*United States Envoy Extraordinary and  
Minister Plenipotentiary.*

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*Attitude of Venezuela in regard to compulsory arbitration.*

On the 26th of December, 1901, the delegates of the Argentine Republic, Bolivia, the Dominican Republic, Guatemala, Mexico, Paraguay, Peru, Salvador, Uruguay, and Venezuela signed, in the City of Mexico, the following:

TREATY.

Article 1st. The high contracting parties obligate themselves to submit to the decision of arbitrators all controversies that exist, or may arise, among them and which diplomacy can not settle, provided that in the exclusive judgment of any of the interested nations said controversies do not affect either the independence or the national honor.

Art. 2d. Independence and national honor shall not be considered as involved in controversies with regard to diplomatic privileges, boundaries, rights of navigation and validity, construction and enforcement of treaties.

Art. 3d. By virtue of the power established in the article 26th of the convention for the peaceful adjustment of international differences signed at The Hague on July 29, 1899, the high contracting parties agree to submit to the decision of the permanent court of arbitration, created by such convention, all the controversies referred to in the present treaty, unless either of the parties prefers the establishment of a special tribunal.

In the event that the high contracting parties should submit to the jurisdiction of the permanent court of The Hague, they accept the precepts of said convention, both with respect to the organization of the tribunal as to its procedure.

Art. 4th. Whenever a special tribunal should be organized on any account, whether it is so desired by any of the parties, or because the permanent court of arbitration of The Hague should not be opened to them, the procedure to be followed shall be established at the time the arbitration agreement is signed. The court shall determine the date and place of its sessions and the language to be used, and shall, in every case, be invested with the authority to decide all questions relating to its own jurisdiction, and even those referring to the procedure of points not considered in the arbitration agreement.

Art. 5th. If upon organizing a special tribunal the high contracting parties should not agree upon the designation of the arbitrator, the tribunal shall consist of three judges. Each State shall appoint an arbitrator, who will designate an umpire. Should the arbitrators fail to agree on this appointee, it shall be made by the Government of a third State, to be designated by the arbitrators appointed by the parties. If no agreement is reached with regard to this last appointment, each of the parties shall name a different power, and the election of the third arbitrator shall be made by the two powers so designated.

Art. 6th. The high contracting parties hereby stipulate that in case of a serious disagreement or conflict between two or more of them, which may render war imminent, they will have recourse, as far as circumstances allow, to the good offices or the mediation of one or more friendly powers.

Art. 7th. Independently of this recourse, the high contracting parties consider it useful that one or more powers, strangers to the dispute, should, on their own initiative, as far as circumstances will allow, offer their good offices or mediation to the States at variance.

The right to offer the good offices or mediation belongs to powers who are strangers to the conflict, even during the course of hostilities.

The exercise of this right shall never be regarded by either of the contending parties as an unfriendly act.

Art. 8th. The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

Art. 9th. The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the methods of conciliation proposed by him are not accepted.

Art. 10th. Good offices and mediation, whether at the request of the parties at variance or upon the initiative of powers who are



strangers to the dispute, have exclusively the character of advice and never have binding force.

Art. 11th. The acceptance of mediation can not, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization, or other measures of preparation for war. If mediation occurs after the commencement of hostilities, it causes no interruption to the military operations in progress, unless there be an agreement to the contrary.

Art 12th. In case of a serious difference endangering peace, and whenever the interested powers can not agree in electing or accepting as mediator a friendly power, it is to be recommended to the States in dispute, the election of a power to whom they shall respectively intrust the mission of entering into direct negotiation with the power elected by the other interested party, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, can not exceed thirty days, the contending powers shall cease all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating powers.

If these friendly powers do not succeed in agreeing on a solution that would be acceptable to those in conflict, they shall designate a third that is to act as mediator. This third power, in case of a definite rupture of pacific relations, shall at all times be instructed with the task of taking advantage of any opportunity to restore peace.

Art. 13th. In controversies of an international nature arising from a difference of opinion on points of fact, the signatory powers consider it useful that the parties who have not been able to come to an agreement by means of diplomacy, should so far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of those differences elucidating the facts by means of an impartial and conscientious investigation.

Art. 14th. The international commissions of inquiry are constituted by special agreement between the parties in dispute. The agreement defines the facts to be examined, and the extent of the commissioner's powers, and settles the procedure to which they must limit themselves. On the inquiry both sides shall be heard, and the form and periods to be observed, if not stipulated by the agreement, shall be determined by the commission itself.

Art. 15th. The international commission of inquiry are constituted, unless otherwise stipulated, in the same manner as the tribunal of arbitration.

Art. 16th. The powers in dispute engage to supply the international commission of inquiry, as fully as them may think possible, with all means and facilities necessary to enable it to be completely acquainted with and to accurately understand the facts in question.

Art. 17th. The above-mentioned commissioners shall limit themselves to ascertain the truth of the facts alleged, without entering into any other appreciations than those merely technical.

Art. 18th. The international commission of inquiry shall present its report to the powers which constituted it, signed by all its members. This report, limited to the investigation of facts, has in no manner the character of an arbitral award, and it leaves the contending parties at liberty to give it the value they may think proper.

Art. 19th. The constitution of commissioners of inquiry may be included in the arbitration bonds, as a previous proceeding, to the end of determining the facts which are to be the subject of the inquiry.

Art. 20th. The present treaty does not abrogate any previous existing ones between two or more of the contracting parties, in so far as they give greater extension to compulsory arbitration. Neither does it alter the stipulations regarding arbitration, relating to specific questions which have already arisen, nor the course of arbitration proceedings which may be pending by reason of the same.

Art. 21st. Without the necessity of exchanging ratifications, this treaty shall take effect so soon as three States, at least, of those signing it, express their approval to the Government of the United States of Mexico, which shall communicate it to the other governments.

Art. 22d. The nations which do not sign the present treaty may adhere to it at any time. If any of the signatory nations should desire to free itself from its obligations it shall denounce the treaty; but such denouncement shall not produce any effect, except with respect to the nation which may denounce it, and only one year after the notification of the same has been made.

Whenever the denouncing nation shall have any arbitration negotiations pending at the expiration of the year, the denouncement shall not have any effect with reference to the case not yet decided.

Transitory article. This agreement shall be raised to the category of a treaty, and shall be signed so as to be incorporated in the final minutes of the conference.

In affixing his signature to this treaty, the delegate of Venezuela said:

The delegate for Venezuela who signs *ad referendum*, makes the following reserve: His country accepts the doctrine that rivers form an integral part of a territory through which they run, and therefore their control corresponds solely and exclusively to the sovereign of the same country; that the question of navigation on rivers and interior lakes implies those of sovereignty, which are some times identified with the latter; and as the latter can not be submitted to arbitration, so is the case with the former. That, for such reasons, and as far as Venezuela is concerned, the questions of navigation on the rivers and on the interior lakes were not included in this treaty. (See Annex No. 2, minutes of the meeting of the thirty-second day, p. 463, *Actas y Documentos de la Segunda Conferencia Pan-Americana.*)

On the 14th of January, 1902, the delegations of the 10 signatory powers forwarded the above "treaty" to the president of the conference, with the following letter:

*To the President of the Second International Conference:*

As the committee on arbitration has failed to arrive at an agreement on the matter entrusted to it, the undersigned delegations, forming the majority of those represented at the conference, have entered into the annexed treaty of compulsory arbitration.

Without affecting in any manner the said treaty and in conformity with the principle established in article 19th of the convention of The Hague on arbitration, the same delegations have entered into a treaty with those others who do not accept the principle of compulsory arbitration, in order that they may adhere to the aforesaid convention and to the others pertaining to The Hague Congress, and which treaty is herewith presented.

The undersigned delegations have therefore the honor of presenting to the conference said treaty of compulsory arbitration, in order that, after taking due note thereof, it may be sent to the department of foreign affairs so as to be perfected.

On the 23d of January, 1902, the secretary-general of the conference transmitted the treaty to the secretary of foreign relations, as requested by the signatory delegates.

On January 28 the secretary of foreign relations replied that the treaty, drawn up in due form, would be in the office of the secretary-general of the conference on January 29, 1902, at 2.30 p. m., to be signed by the delegates.

All the delegates, except the delegate of Venezuela, called at the office and signed the treaty.

The text is printed with all the other acts of the conference. (See p. 867, *Actas y Documentos de la Segunda Conferencia Pan-Americana.*)

No difference exists between the 22 articles of the treaty signed on December 26, 1901, and those of the treaty signed on January 29, 1902.

The treaty was not signed on January 29, 1902, by the Venezuelan delegate, as his Government had withdrawn from the conference on December 31, 1901.

The reason of the withdrawal was as follows:

Mr. Walker-Martínez, the delegate of Chile, sent to the secretary of foreign relations of Venezuela the following telegram:

Confident that you will remember the friendship that united us, and the good intent you have always manifested toward Chile, I dare give you some information that answers to my wish that the brotherly ties that united Chile and Venezuela may never be severed.

The Pan-American Congress approaches its end without having been able to formally voice by its vote its adhesion to the principles laid down by The Hague Conference. Although the majority of the members of the conference desire

such a vote, Peru, Bolivia, and Argentina have succeeded in attracting to their hot-headed policy the representatives of Venezuela, Paraguay, and Santo Domingo, inducing them to abstain from joining in any such action up to the last meeting, and even to threaten to withdraw, so as to make the conference a failure, if demands that do not have general sympathy be not acceded to.

I would not be surprised if the Venezuelan representative would uphold the idea of arbitration with entire liberty, as is done by the representatives of Uruguay and Guatemala, who defend their position with good reasoning, but without pretending to impose their ideas on other nations.

What is surprising all, and will, no doubt, surprise you also, is that the young Galaviz should act with such warmth as to disturb the work of the majority of the congress, and should support a hatred that his Government does not entertain, and one that can only be accounted for in countries that have been at war with Chile.

We, the Chilean delegates, will accept calmly the issues and not attempt to impose our views. We admit the opinion of the majority should triumph. We still work to the end that a resolution which will unite all in purpose shall be adopted.

You, my dear general and friend, could succeed in carrying out a conciliatory programme and an American one. If you can manage that the representative of your country be advised not to join with those who seek in the congress only a means to molest Chile, a country friendly to Venezuela, you will do a great work.

I hope you will excuse my calling your attention to this, but my high motive and the urgency of preventing a failure of the congress, which might perhaps come in two or three days, excuse me. If you can exert by cable your valuable influence you will accomplish much.

The secretary of foreign relations replied to Mr. Walker-Martínez as follows:

Delegation withdrawn on December 31. Venezuela wants American peace, avoiding all clash.

*Statement of total number and total amounts of claims presented to and of awards made by the five most important commissions to which the United States has been a party during the last fifty years; showing also the percentage of allowances to amounts claimed.*

I.—UNITED STATES AND MEXICAN CLAIMS COMMISSION OF JULY 4, 1893.

|                                   | Total claimed.      | Total allowed.    | Per cent allowed. | Remarks.   |
|-----------------------------------|---------------------|-------------------|-------------------|--|
| Claims against Mexico .....       | \$470, 126, 613. 40 | \$4, 125, 622. 20 | 0.00877           | Final report of United States agent, pp. 66, 67.<br>Final report of United States agent, pp. 94, 95. |
| Claims against United States..... | 86, 661, 891. 15    | 150, 498. 41      | .00162            |  |

II. UNITED STATES AND BRITISH COMMISSION OF MAY 8, 1871, FOR CIVIL WAR CLAIMS.

|                                  | Total claimed.     | Total allowed.    | Per cent allowed. | Remarks.                              |
|----------------------------------|--------------------|-------------------|-------------------|---------------------------------------|
| Claims against United States.... | \$96, 000, 000. 00 | \$1, 929, 819. 00 | 0.0201            | I. Moore, Arbitrations, pp. 632, 693. |
| Claims against Great Britain.... | 1, 000, 000. 00    | Nothing.          | -----             |                                       |

*Statement of total number and total amounts of claims presented to and of awards made by the five most important commissions to which the United States has been a party during the last fifty years; showing also the percentage of allowance to amounts claimed—Continued.*

### III. SPANISH CLAIMS COMMISSION OF FEBRUARY 12, 1871.

|                           | Total claimed.  | Total allowed. | Per cent of allowance. | Remarks.                              |
|---------------------------|-----------------|----------------|------------------------|---------------------------------------|
| Claims against Spain..... | \$30,813,581.32 | \$1,238,450.56 | 0.0426                 | H. Moore Arbitrations, pp. 1050-1051. |

### IV. FRENCH-AMERICAN CLAIMS COMMISSION OF JANUARY 15, 1880.

|                                   | Total claimed.  | Total allowed. | Per cent of allowance. | Remarks.   |
|-----------------------------------|-----------------|----------------|------------------------|--|
| Claims against the United States. | \$17,868,151.27 | \$225,566.35   | 0.00801                | Final report of agent of United States, pp. 72-73. |
| Claims against France .....       | 2,427,544.91    | 13,659.14      | .00056                 |  |

### V.—UNITED STATES AND CHILEAN CLAIMS COMMISSION OF AUGUST 7, 1892.

|                                   | Total claimed.  | Total allowed. | Per cent of allowance. | Remarks.                                 |
|-----------------------------------|-----------------|----------------|------------------------|--|
| Claims against Chile .....        | \$26,042,976.96 | \$240,564.35   | 0.0023                 | (H. Moore Arbitrations, pp. 1480, 1481.) |
| Claims against United States..... | 264,740.00      | -----          | -----                  |  |

The commission expired by limitation, leaving undisposed of claims against the United States for \$232,240, and against Chile for \$9,130,620.

These undisposed of cases were submitted to the new commission of May 24, 1897.

|                                   | Total claimed. | Total allowed. | Per cent of allowance. | Remarks.                      |
|-----------------------------------|----------------|----------------|------------------------|-------------------------------|
| Claims against Chile .....        | \$9,130,620.00 | \$28,062.29    | 0.00807                | Report of agent, 1901, p. 19. |
| Claims against United States..... | 232,240.00     | 3,000.00       | .0129                  |                               |

PEKING, June 14, 1902.

The representatives of the foreign powers signatory to the final protocol, in a meeting held June 14, have declared that they accept, each in behalf of his Government, the apportionment of the indemnity of 450,000,000 taels, according to the following list:

| Country.               | Per cent. | Per cent. | Taela.     | Taela.      |
|------------------------|-----------|-----------|------------|-------------|
| Germany.....           | 20.01567  | .....     | .....      | 90,070,515  |
| Austria.....           | .88976    | .....     | .....      | 4,008,920   |
| Belgium.....           | 1.88541   | .....     | .....      | 8,484,345   |
| Spain.....             | .08007    | .....     | .....      | 185,315     |
| United States.....     | 7.81979   | .....     | .....      | 32,939,055  |
| France.....            | 15.75072  | .....     | .....      | 70,878,240  |
| Great Britain.....     | 11.24901  | .....     | 50,620,545 | .....       |
| Portugal.....          | .02050    | 11.26951  | 92,230     | 50,712,795  |
| Italy.....             | 5.91489   | .....     | .....      | 23,617,005  |
| Japan.....             | 7.78180   | .....     | .....      | 34,793,100  |
| Holland.....           | .17880    | .....     | .....      | 732,100     |
| Russia.....            | 28.97186  | .....     | .....      | 120,871,120 |
| International.....     | .08326    | .....     | 142,670    | .....       |
| Sweden and Norway..... | .01296    | .04722    | 22,220     | 312,480     |
|                        |           |           |            | 450,000,000 |

REPORT OF COMMITTEE ON FOREIGN BONDHOLDERS.

Principal loans in default in 1901-2.

ARGENTINA.

| Loans.                                  | Principal out-standing. | Coupons in arrears (both inclusive). | Approximate arrears of interest. |
|---|-------------------------|--------------------------------------|----------------------------------|
| <i>Municipal loans.</i>                 |                         |                                      |                                  |
| City of Cordoba, 6 per cent, 1887.....  | \$198,400               | {Feb. 1, 1891<br>Aug. 1, 1902}       | \$142,843                        |
| City of Cordoba, 6 per cent, 1889.....  | 505,200                 | {Jan. 1, 1891<br>July 1, 1902}       | 423,524                          |
|   | \$793,600               |                                      | \$571,373                        |
| City of Santa Fe, 6 per cent, 1889..... | 257,900                 | {Dec. 1, 1893<br>June 1, 1903}       | 139,203                          |
| Total.....                              | 1,051,500               |                                      | 710,576                          |

Cedulas of the Mortgage Bank of the province of Buenos Aires—Principal, interest, “bonos,” and certificates outstanding December 31, 1901 (at 127 premium), say, £15,858,688. .

Last coupon paid in full October, 1890. Partial payments in currency and scrip made to October, 1892. No cash payments have since been made.

COSTA RICA.

| Loans.                                   | Principal outstanding. | Coupons in arrears (both inclusive). | Approximate arrears of interest. |
|--|------------------------|--------------------------------------|----------------------------------|
| External debt, A bonds, 8 per cent.....  | \$535,000              | {Jan. 1, 1895..<br>Apr. 1, 1903..}   | \$122,025                        |
| External debt, B bonds, 2½ per cent..... | 1,475,000              |                                      |                                  |
|  | 2,000,000              |                                      |                                  |



*Principal loans in default in 1901-2—Continued.*

## MISSISSIPPI.

| Loans.                                  | Principal outstanding. | Coupons in arrears (both inclusive). | Approximate arrears of interest. |
|---|------------------------|--------------------------------------|----------------------------------|
| 6 per cent of 1881-3 <sup>a</sup> ..... | £400,000               | { Mar. 1, 1841..<br>Mar. 1, 1902.. } | £1,476,000                       |
| 5 per cent of 1888 <sup>b</sup> .....   | 1,000,000              | { Mar. 1, 1841..<br>Mar. 1, 1902.. } | 8,075,000                        |
|   | 1,400,000              |                                      | 4,551,000                        |

<sup>a</sup> Planters' Bank bonds.<sup>b</sup> Union Bank bonds.

## SANTO DOMINGO.

|                                  |            |                                  |                            |
|----------------------------------|------------|----------------------------------|----------------------------|
| Obligations, or 2½ per cent..... | £2,736,750 | { Apr. 1, 1899<br>Apr. 1, 1902 } | { See note on<br>page 342. |
| Unified 4 per cent bonds.....    | 1,148,600  | { Apr. 1, 1899<br>Apr. 1, 1902 } | { See note on<br>page 342. |
|                                  | 3,885,350  |                                  |                            |

## VENEZUELA.

|                              |            |                                    |           |
|------------------------------|------------|------------------------------------|-----------|
| External debt of 1881.....   | £2,638,200 | { Aug. 15, 1898<br>Aug. 15, 1902 } | £336,870  |
| 5 per cent loan of 1890..... | 1,982,967  | { Dec. 30, 1898<br>June 30, 1902 } | 2,287,507 |
|                              | 4,571,167  |                                    | 2,623,877 |

## WEST VIRGINIA.

| Loan.             | Principal outstanding. |  |  |
|-------------------|------------------------|--|--|
| Certificates..... | £3,047,874             | Being West Virginia's one-third share of the old debt of Virginia apportioned 1st July, 1871, not yet recognized by West Virginia. |  |

## COLOMBIA.

| Loan.                                   | Principal outstanding. | Coupons in arrear (both inclusive). | Approximate arrears of interest. |
|---|------------------------|-------------------------------------|----------------------------------|
| Consolidated external debt of 1896..... | £2,700,000             | { Jan. 1, 1900<br>July 1, 1902 }    | £155,250                         |

## FORMER CONFEDERATE STATES.

|                                       |            |                                   |            |
|---------------------------------------|------------|-----------------------------------|------------|
| 7 per cent of 1868 (cotton loan)..... | £2,418,800 | { Sept. 1, 1865<br>Mar. 1, 1902 } | £6,264,692 |
|---------------------------------------|------------|-----------------------------------|------------|

## GUATEMALA.

|   |            |                                    |          |
|---|------------|------------------------------------|----------|
| New 4 per cent external debt of 1895..... | £1,482,800 | { Dec. 30, 1898<br>June 30, 1902 } | £207,592 |
|---|------------|------------------------------------|----------|

*Principal loans in default in 1901-2—Continued.***HONDURAS.**

| Loan.                     | Principal outstanding | Coupons in arrears (both inclusive). | Approximate arrears of interest. |
|---------------------------|-----------------------|--------------------------------------|----------------------------------|
| 5 per cent of 1887 .....  | \$75,800              | { Apr. 1, 1878<br>Apr. 1, 1902       | \$116,280                        |
| 10 per cent of 1887 ..... | 900,700               | { Jan. 1, 1878<br>July 1, 1902       | 2,708,100                        |
| 6½ per cent of 1889 ..... | 2,178,570             | { Mar. 1, 1878<br>Mar. 1, 1902       | 4,260,568                        |
| 10 per cent of 1870 ..... | 2,248,560             | { Jan. 1, 1878<br>July 1, 1902       | 6,737,560                        |
| Total .....               | 5,293,630             |                                      | 12,822,418                       |

**LOUISIANA.**

|  |           |  |  |
|--|-----------|--|--|
| 7 per cent consolidated of 1874 certificates of claim (\$5-21) ..... | \$184,428 |  |  |
|--|-----------|--|--|

**NOTE.**—Issued under notarial protests by the council of foreign bondholders of London, in accordance with the resolutions of May, 1875, for the loss of 40 per cent principal involved in the conversion of the corresponding amount of bonds (held in England) under the funding act of January, 1874.

*Summary of principal loans in default in 1900-1902.*

| States.                            | Approximate principal outstanding. | Approximate interest arrears. |
|------------------------------------|------------------------------------|-------------------------------|
| Argentine municipal loans .....    | \$1, 00                            | \$710,000                     |
| Argentine provincial cedulas ..... | 15, 89                             |                               |
| Colombia .....                     | 2, 00                              | 155,250                       |
| Costa Rica .....                   | 2, 00                              | 132,000                       |
| Former Confederate States .....    | 2, 00                              | 6,254,000                     |
| Guatemala .....                    | 1, 00                              | 307,500                       |
| Honduras .....                     | 5, 00                              | 12,822,418                    |
| Louisiana (certificates) .....     | 1, 00                              |                               |
| Mississippi .....                  | 1, 00                              | 4,551,000                     |
| Santo Domingo .....                | 2, 50                              |                               |
| Venezuela .....                    | 4, 67                              | 2,000,877                     |
| West Virginia .....                | 2, 74                              |                               |
| Total .....                        | 48,959,161                         | 26,473,000                    |

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PART IV.

Case of the United States.

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## **CASE OF THE UNITED STATES.**

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**PRINTED ARGUMENT OF WILLIAM L. PENFIELD.**

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|   |   |
|---|---|
| <b>GREAT BRITAIN, GERMANY, AND ITALY</b>    | <b>} Before the permanent court<br/>of arbitration.</b> |
| <b>v.<br/>THE UNITED STATES AND OTHERS.</b> |   |

**PRELIMINARY EXAMINATION ON THE PART OF THE UNITED STATES OF THE QUESTION WHETHER GREAT BRITAIN, GERMANY, AND ITALY ARE ENTITLED TO PREFERENTIAL TREATMENT OVER THE UNITED STATES AND THE OTHER CREDITOR STATES IN THE PAYMENT OF THEIR CLAIMS OUT OF THE 30 PER CENT OF THE CUSTOMS REVENUES ASSIGNED BY VENEZUELA FOR THE EQUAL PAYMENT OF THE CLAIMS OF THE CREDITOR STATES.**

On behalf of the United States it is not unbecoming to express our sincere appreciation of the perfect courtesy which the Government of the United States and its counsel have received at the hands of the court and its officers, the administrative council, and all counsel who appear as our associates or as our temporary adversaries.

We truly represent the sentiments of our Government in this expression of our grateful appreciation, and of its most earnest wish and purpose to uphold the high character of the court, to advance the cause of international arbitration, and to promote the most friendly and pacific relations among all nations.

We are not charged with any political or diplomatic mission. We have been commissioned simply as counsel, authorized to present to the court arguments of a legal nature in the customary forms of forensic discussion. Nothing of a political nature, therefore, will be said during the course of this examination, or, if it should be done, it would be unintentional, and would be contrary to our express instructions from the Secretary of State.

Great Britain, Germany, Italy, the United States, Mexico, Spain, France, Belgium, the Netherlands, and Sweden and Norway severally hold claims against the Republic of Venezuela. The most, if not

all, of these States were pressing Venezuela for the settlement of their claims before the controversy had become acute between Great Britain and Germany on the one hand and Venezuela on the other. The United States was urging the payment of her claims.

On December 7, 1902, the British and German ultimatums were delivered to the Venezuelan Government, demanding the recognition in principle of the justice of their claims, the immediate cash payment of certain claims, and the submission of other claims to the decision of a mixed commission. On December 11, 1902, the British Government ordered, and on the 20th of December, 1902, declared the blockade of the Venezuelan ports of La Guaira, Carenero, Guanto, Cumano, Corupano, and the mouths of the Orinoco. On November 17, 1902, the Venezuelan Government appealed "to the sense of fairness of His Majesty's Government to effect a settlement of the present abnormal and regrettable situation by placing matters on a basis of mutual agreement." (Blue Book, p. 181, No. 206.)

On December 19, 1902, three days before the blockade was actually declared, Venezuela expressed her earnest wish for arbitration.

The action taken by the Italian Government perfectly illustrates the tendency of such proceedings to draw all creditor nations into war with a weak debtor state, in order to prevent a preference of the claims of warlike states to those of pacific states. Thus on December 3, 1902, the Italian minister for foreign affairs stated to the British minister that he understood a strong representation was about to be made by His Majesty's Government, and that coercion might have to be resorted to; that Italy might also have to take coercive measures against Venezuela, and would gladly join in any steps taken by His Majesty's Government. The participation of Italy in the action of the other two Governments quickly followed. It was only necessary for the United States and the other creditor nations to declare, or to join the other powers in declaring, the blockade of the Venezuelan ports; and this action would have settled the question in favor of the equality of all the creditor states.

#### THE ATTITUDE OF THE UNITED STATES.

In order to exhibit the attitude of the United States, which was friendly and just toward all the differing states, it is sufficient to refer to the correspondence published in the British Blue Book, entitled "Venezuela, No. 1, 1903."

On December 15, 1902, the Marquess of Lansdowne advised Mr. Buchanan of "the proposal made to His Majesty's Government by that of Venezuela in regard to the possibility of settling by arbitration the claims which had been preferred by the British and German Governments against that of Venezuela for injury to British and German subjects. (Blue Book, p. 173, No. 190.)



On December 16, 1902, the Marquess of Lansdowne suggested to the German ambassador whether the United States Government might not be invited to arbitrate upon certain of the claims. (Blue Book, p. 174, No. 193.)

On December 17, 1902, the American chargé d'affaires informed Lord Lansdowne "that the Venezuelan Government now earnestly wished for arbitration, which, in the opinion of the United States Government, seemed to afford a most desirable solution of the question in dispute. (Blue Book, p. 175, No. 195.)

On December 18, 1902, Lord Lansdowne informed the United States chargé d'affaires that the British and German Governments had decided to accept in principle the idea of settling the Venezuelan dispute by arbitration, and the President of the United States was invited to act as arbitrator. (Blue Book, p. 177, No. 198.) On the same day the German Government proposed to thank the United States Government for their good offices in communicating the Venezuelan proposal and said that it seemed to offer a sufficient basis for a just settlement of the dispute, with the reservation, however, of the first-rank claims. The United States Government was asked to exert its influence with the Venezuelan Government by persuading the latter to accept these proposals. At the same time, the German Government had received a communication from the United States chargé d'affaires, intimating the hope of the United States Government that the two parties would resort to arbitration. (Blue Book, p. 177, No. 199.)

On December 22, 1902, the German Government communicated to the United States embassy at Berlin its reply to the proposal of arbitration. The Imperial Government expressed to that of the United States "their best thanks for the efforts of the latter to settle in a satisfactory manner the undersigned controversy with Venezuela. The proposal made by the United States that an arbitrator should be appointed seems both to Germany and England to be a satisfactory basis for arriving at a fair settlement of their claims."

But reservations were made of certain claims from the proposed arbitration; and it was added that "the Government of the United States would be conferring an obligation on the Imperial and British Governments if, by exerting their influence over the Venezuelan Government, they could succeed in persuading the latter to accept these proposals." The President was invited to undertake the office of arbitrator. (Blue Book, p. 181, No. 207 and inclosure.)

On December 22, the Marquess of Lansdowne was informed by the United States chargé d'affaires "that, while the President would not decline any service desired by the powers interested for the settlement of pending claims against Venezuela, he desired to intimate that he would regard it as altogether desirable that the matter should

be referred to The Hague Court of Arbitration. At the same time Lord Lansdowne stated that "should the President decide upon refusing, we, the two Governments, were prepared to refer the question to The Hague Tribunal." (Blue Book, p. 182, No. 203.)

On December 27, 1902, the United States chargé advised Lord Lansdowne that "if no other—or no better—means of settling the subjects in dispute presented themselves, the President would willingly comply with the wishes of the powers and give his best efforts to an end so laudable. But the President has thought it most desirable from the beginning that the entire controversy should be submitted to the judgment of that high tribunal at The Hague, which has been created by the principal powers of the world for the consideration of precisely such causes, involving, as the present controversy does, no question of national honor nor the cession of territory. After a thorough consultation with all the powers concerned, during which the President has found an honorable spirit of candor and of mutual consideration animating every one of them, he has been greatly gratified to learn that, in the event of his not undertaking the important duty to which the powers have invited him, they would all be willing to accept a reference to The Hague. The President has, therefore, the greatest pleasure in announcing to the Governments of Great Britain, Germany, Italy, and Venezuela that all of them have accepted in principle the proposition of a reference of pending questions to the tribunal of The Hague.

"If the President can be of any further service in arranging the preliminaries of such an understanding, he will gladly hold himself at the disposition of the powers concerned, and if their representatives should find it desirable to meet in Washington, he would be happy to welcome them there and to facilitate their labors in every possible way." (Blue Book, p. 184, No. 212.)

The result of the active and friendly exertions of the President was communicated by the American embassy to the Marquis of Lansdowne on January 1, 1903, namely, that President Castro recognized in principle the claims which the allied powers had presented to Venezuela, and expressed the desire "to arrange either an immediate settlement of all the claims or the preliminaries for a reference to the tribunal of The Hague or to an American Republic to be selected by the allied powers and by the Government of Venezuela." (Blue Book, p. 186, No. 215.)

Finally, the Secretary of State informed the British ambassador that "the President is extremely anxious to be of all possible service in the amicable settlement of pending questions, but he sees no reason to change his views, hitherto expressed, that a reference to The Hague of the question referred to would be in many respects a more judicious

and satisfactory conclusion of the matter than for him to accept the invitation of the powers, the honor and compliment of which he fully appreciated and for which he is deeply grateful." (Blue Book, p. 228, No. 269.)

It is evident that the President might feel a delicacy in acting as arbitrator of this question, which affected the payment of claims of citizens of the United States as well as of the other creditor nations, but it is equally clear that the attitude of the United States Government throughout the entire controversy entitles it to the favorable consideration of the court. With complete respect for all the parties to the arbitration, and without seeking to institute any invidious comparison between the attitude of the United States Government and that of any other government, we feel that we may rightfully claim that if any government is entitled to preferential treatment by this court it is the Government of the United States.

#### THE UNITED STATES A CREDITOR STATE.

The United States has established its right, as a creditor State, to share in the distribution of the 30 per cent trust fund. The documents in evidence consist of all the protocols already before the court, and of the reports of the agent for and the commissioner of the United States on the Venezuelan Mixed Claims Commission.

The work of the commission began on June 1, 1903, and is not finished, and the counsel for the United States submit all the reports that had been received by the Department of State at the date of their departure for The Hague. It will be possible to submit the complete allowances made by the commission before the decision of this case by the court, if it should so direct; but enough has been shown to establish the right of the United States, as a creditor State, to share in the distribution of the trust fund.

It will be observed that the awards are payable in United States gold, and that on July 25 they amounted to \$139,428.43.

According to the report, dated July 18, 1903, made to the Secretary of State by W. E. Bainbridge, commissioner on the part of the United States, allowances had already been made in favor of the following claimants, as follows:

|   |              |
|---|--------------|
| Ford Dix-----                                     | \$11,837. 53 |
| Paez-----   | 2,550. 00    |
| Garmendia-----                                    | 29,363. 64   |
| Coro and La Vela Railway Improvement Company----- | 61,104. 70   |
| Smith-----  | 2,928. 83    |
| Roulton, Bliss & Dallett-----                     | 27,644. 23   |

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135,428. 43

According to the report, dated July 25, 1903, of Robert C. Morris, agent of the United States before the commission, further allowances had been made in favor of claimants, as follows:

|   |          |
|---|----------|
| The American Electric and Manufacturing Company ----- | \$2, 000 |
| J. Lasry-----   | 2, 000   |
|   | <hr/>    |
|   | 4, 000   |

#### EQUALITY OF STATES.

While each State is sovereign within its own domain, elsewhere—on the high seas and everywhere within the domain of the general community—all States are equal, having equal rights and duties of respect, of representation, and of justice. Each may demand justice for its nationals domiciled in another State, but not to the exclusion of the same right of the nationals of other States. The pretension to such exclusive right assails the sovereignty of a debtor State. It also assails that of other States having claims equally just; and if insisted on it would necessarily provoke resentments and lead to inevitable conflicts. Special favors of one State to another are exceptions introduced by treaties, not by public law. Hence treaties of commerce and navigation and other conventions granting special privileges by one State to another. But there can be found no treaty or convention which, in the same breath, grants justice to the nationals of the contracting parties and denies to the nationals of other States. Such treaties would be void as against third States. They would not and could not be respected by the civilized nations. Discrimination in matters of justice is impossible. When the allies ask you to discriminate in a matter of justice, they ask you to deny justice.

The contention of the allies implies that they have the same liberty of action in international affairs as they have, respectively, in their internal affairs. No State has the right to deny justice to any other State. The distinction between the internal and external powers of government is clearly stated by Mr. De Martens in his treatise on international law:

Internally a government takes all necessary measures with an entire independence, consulting only the law and its just interpretation. There can be no such liberty of action in the domain of international administration.

This liberty is regulated by the law of nations, whose vital principle is justice and equity.

The discrimination asked for by the allies is, therefore, unlawful. It is contrary to international law and to the international precedents set in Turkey, in Egypt, and in China, with respect to the collection of claims of nationals of other states. The recent collection of indemnities in China and the fiscal arrangements in Egypt and in Turkey imply a recognition of the principle of equality in matters of

justice. The principle is as old as the law. It is one which is commonly practiced both by the United States and Great Britain. Long before this controversy arose it had been asserted.

In fact, the constant maintenance of this attitude is, internationally, the only one that is possible. It is indispensable to relations of peace and friendship.

It is indispensable to the commercial progress of the world and in preventing creditor nations from eventually coming to blows between themselves. Beginning as early as 1880, the principle has been invoked in a number of cases by the United States and Great Britain. We attach in the appendix hereto correspondence of the United States and British Governments in several cases, beginning June 17, 1880, and ending June 25, 1900, showing their common recognition of the principle.

**LOSS AND DETRIMENT ALREADY SUFFERED BY THE UNITED STATES THROUGH THE ACTION TAKEN AND THE PREFERENCES ALREADY OBTAINED BY THE ALLIES.**

If the United States Government had been actuated by a spirit of greed, undoubtedly it could have saved the discussion of this question by joining in the warlike action. It could have secured by a minimum of trouble—as Italy did—an equal footing with the allies.

After the invitation of the allies to the President to act as arbitrator, does any one suppose that they would have declined such overtures from him? Can it be imagined that they would have said that the just claims of the United States were less just than their own? From the great and friendly States of Great Britain and Germany the United States could have counted on considerate and equitable treatment. But after she had shown herself the friend of all the parties, the friend of justice, and of the judicial process for the settlement of all such controversies, is her attitude to be, in effect, condemned by the judgment of this court, punishing her and preferring the allies in a matter of simple justice?

Lord Lansdowne expressed the opinion that “the other powers will, without doubt, under the arrangements proposed by the blockading powers, be in a more favorable position than they were before, and that, too, without incurring any of the trouble or expense involved in the naval operations which have been undertaken.” In point of fact, the United States is in a less favorable position than she would have been if the naval operations of the blockading powers had not occurred.

The United States holds no specific security for the payment of her claims, all of which, of every description, are subject to judicial investigation. She, moreover, holds unpaid awards against Venezuela in the sum of \$78,654.27, or approximately 393,271 bolivars.

By the protocol of February 17, 1903, between the United States and Venezuela, the latter solemnly promised that "all existing and unsatisfied awards in favor of citizens of the United States shall be promptly paid according to the terms of the respective awards." Yet, such has been her impoverishment by the desolating wars and blockade which she has suffered; such has been the drain upon her resources in meeting the needs of the Government and in meeting her imperative pecuniary engagements with the allies, that, from the day the blockade was declared down to the present moment, not a dollar has been paid by Venezuela either on the claims or on the awards of the United States. In the meantime she has paid to the allies, under the terms of her protocols with them, approximately the sum of 1,993,815 bolivars.

We attach, in the appendix hereto, a letter and accompanying statement from the Secretary of State, showing the amounts due and unpaid on the awards referred to, from which it will be seen that the amount of the awards rendered in favor of the United States was \$659,524.31; that there was a balance due on the awards on June 15, 1901, of \$58,416.85; that no payment has since been made, and that the balance due, including principal and interest, on June 30, 1903, is \$63,059.19.

The mixed claims commission of 1894, between the two Governments, rendered an award in favor of the United States in the sum of \$141,500. There was due the sum of \$3,537.50 payable quarterly, beginning September 15, 1901, and ending June 15, 1902, all of which, together with the interest thereon, amounting in all to \$15,594.48, is still due and unpaid. The total amount of these awards, due and unpaid to the United States, is \$78,654.22. Their justice has been established by judicial decision. Shall their payment be further postponed as the result of your decision? Shall the other revenues of Venezuela be called on to pay the claims of the peace powers? And, if so, must the means for the payment of these awards be still further impaired so that their payment must be still further postponed?

The British ambassador at Washington reported to Lord Lansdowne, in his dispatch No. 240, January 23, 1903 (British Blue Book, p. 217), that he was informed by Mr. Bowen that out of the customs revenues of the two ports "only 32 per cent would be left for the expenses of the Government and the payment of the army, and Venezuela could not possibly get on with less."

In the light of these facts, how can the opinion of Lord Lansdowne be maintained, that the United States will, "under the arrangements proposed by the blockading powers, be in a much more favorable position than they ever were before, and that, too, without



incurring any of the trouble or expense involved in the naval operations which have been undertaken?"

The only security for the payment of these awards is the pecuniary ability and good faith of the Republic of Venezuela. For, by the protocol of February 17, 1903, the United States, considering the unhappy condition of Venezuela, embroiled at once in a civil war, and in a war with three great powers, was induced to accept the simple promise of Venezuela to pay promptly all existing and unsatisfied awards.

The United States has been able to obtain the settlement of her diplomatic claims without engaging in warlike operations against the debtor State. During the last six years she has collected, through arbitration, nearly \$3,000,000 of such claims, almost all of which were against other American States. She does not need recourse to arms, and we do not understand how the arms of other States are of advantage to her in accomplishing that object.

Moreover, we had always understood, from the writings of the publicists, that a warlike blockade is prejudicial to the commerce of the neutral powers with the blockaded State, and is prejudicial to the interests of the creditors of the debtor State, because of the consequent reduction of her revenues. In point of fact, the diplomatic claims of the United States against Venezuela were treated by her in the same negative form in which she treated the claims of the allies. But negation and delay in the course of such matters should not create surprise or indignation. In this very case we have had a similar experience in the appointment of this tribunal. Certainly it was not the fault of the Emperor of Russia that he was not seasonably invited by Great Britain and Germany to name the arbitrators. Nor are we blaming the British Government for its delay, because we observe from the newspaper press that His Majesty's Government has its hands full of the business of domestic politics; and we make allowance for the internal conditions of a country in considering the inattention of its government to matters of secondary importance. Considerations of this nature help to explain delays in the disposition of such matters to a government engaged in war. It was so with Venezuela; it was so with the United States during the great civil war and during the late war with Spain; it was so with the British Government during the war in South Africa, and it was not till that war was ended that the European States and the United States Government got a settlement of their claims growing out of that war against His Majesty's Government through a British commission that sat in London last year.

Hence, we emphasize our position that the warlike operations of the allies did not benefit the United States. Far less delay would she have experienced in the settlement of her claims by Venezuela

who, as experience has proved, and notwithstanding her dilatory procedure, does finally yield to a courteous and insistent demand for impartial arbitration.

We, therefore, contend that too much stress should not be placed on the refusal or delay of a government in considering pecuniary claims. Diplomatically, they are usually considered as affairs of secondary importance. And pretexts for refusals and delays are naturally sought by a weak state, whose government is in danger of revolution, through a too ready compliance with demands for the payment of claims, which are so often looked upon as unjust, exorbitant, and outrageous. The government in power may feel itself constrained to make a brave show of resistance in order to satisfy its own people. To this cause may be partly attributed the obstacles set by interior legislation, as well as by diplomatic procedure, in the way of the prompt disposition and settlement of these claims. This assuredly is not an ideal diplomatic situation for any government to occupy. Few diplomatic situations are ideal. But diplomacy deals with facts as they are found; it is considerate of the weakness and of the internal difficulties of a State, which is desolated and exhausted by civil disorders, and makes due allowance for the language held by a ruler and his attitude toward his people. While her diplomatic correspondence with the allies was not, perhaps, all that would be expected of the foreign offices of the more powerful nations, Venezuela should not be judged too severely if she is to be judged justly.

How, then, have the other creditor nations benefited by the warlike operations of the allies? Did it benefit France? Did it benefit the United States? The United States has, in the last few years, had two mixed claim commissions with Venezuela. She was negotiating with Venezuela for the settlement of her claims at the same time as the allies, and experience had abundantly proved that after the Government of Venezuela should be again established and peace restored a satisfactory arrangement could be made. This, of course, involved delays, unfortunate for her creditors, but still more unfortunate for her; and even more unfortunate for her creditors at large was the result of the naval operations which ravaged her commerce, crippled her resources, and diminished her ability to meet promptly all her pecuniary engagements.

A thoughtful and candid examination of the premises of the opinion, expressed by Lord Lansdowne, will serve to accentuate the substantial disadvantage which has resulted to the creditor States who remained at peace with Venezuela, while the allied powers have obtained prompt satisfaction of their first-rank claims, security for their second-rank claims, and an assured adjustment of the claims of foreign bondholders, who, over seventy years ago, took some voluntary and benevolent risks in the revolution in South America.

**PREFERENCES ALREADY OBTAINED BY THE ALLIES.**

The protocols of February 13, 1903, between the Venezuelan Government and the allied powers, the protocol between the United States and Venezuela of February 17, and the similar subsequent protocols between Venezuela and the other creditor States, for the creation of mixed claims commissions, indicate in general the nature of the claims. But the claims of the allies are more specifically described in the following memorandums:

The German memorandum of November 13, 1902 (British Blue Book, Venezuela, No. 137, p. 147), states "that the first-class claims, for which Germany demands settlement, amount approximately to 1,700,000 bolivars, arising out of the civil wars of 1898-1900; and that the British first-class claims grow out of the illegal removal and destruction of English merchant ships. It is also stated "that, in the event of having recourse to coercive measures, the two powers would make further demands, viz, Germany would demand the settlement of her claims arising out of the present (1902) Venezuelan civil war, amounting approximately to 3,000,000 bolivars, and also the guaranteeing of claims of German creditors, especially those of the Disconto Gesellschaft, amounting approximately to 41,000,000 bolivars. England would likewise assert the demands of her subjects, especially claims of the English railways in Venezuela, on account of the damage to their lines and failure to meet deferred liabilities. These claims of the second class would be combined, according to their several natures, by the adoption of the joint proposals (recently agreed upon by the Disconto Gesellschaft and the several groups of English creditors interested) for the settlement of the Venezuelan loans of 1881 and 1896."

The amounts of the German claims are also shown by the memorandum communicated by Count Metternich December 17, 1902, from a memorandum communicated by Count Bulow to the Reichstag, December 9 (British Blue Book, p. 175), as follows:

Damages from the civil wars of 1896-1900, 1,700,000 bolivars;

Damages of the last (1902) civil war, 3,000,000 bolivars;

The claims of the Great Venezuela Railway, a German enterprise, 7,500,000 bolivars (about £300,000).

In the memorandum of the German Government to the United States embassy at Berlin, inclosed by the Marquess of Lansdowne to Sir F. Lascelles, December 22, 1902 (British Blue Book, No. 207, p. 181), the amount of the German claims for the years 1898-1900 is given at 1,700,000 bolivars, or \$325,000.

The amount of the other claims is not mentioned, but reference is made to the memorandum communicated to the Reichstag. But from the data furnished by these memorandums the total amount of the

German claims may be fairly estimated at about 50,000,000 bolivars, or \$10,000,000.

The nature of the first-rank claims of the British Government, for damages to English ships and subjects, is shown by a memorandum of the British foreign office, dated July 20, 1902 (British Blue Book, p. 126, No. 108); and in the memorandum of the British foreign office, dated October 22, 1902, communicated to the German ambassador (Blue Book, p. 141-142, No. 127). No sums or amounts are given in either of these memorandums.

In the instruction of the Marquess of Lansdowne to Sir Michael Herbert, dated January 13, 1903 (British Blue Book, p. 209, No. 234), the claims on account of British vessels and subjects are stated at about £5,500. The amount stated for railway claims and for injury to or seizure of property is £600,000, for which a cash payment or guarantee is required. The claims of the bondholders are put forward, but the amount is not stated. But these claims are elucidated in the memorandum inclosed in instruction No. 234 (British Blue Book, p. 213). These claims are alleged to have originated in 1834, by Venezuela becoming responsible for 28½ per cent of the original Colombian debt, contracted in England to carry on the war of independence. The total amount of the debt and interest so assumed is stated at £2,794,826. The present amount of this claim, including principal and interest, is stated at £3,032,825.

The total amount of the 5 per cent loan of 1896, issued through the Disconto Gesellschaft, is given at 51,467,537 bolivars, including principal and interest. But it is also stated in the memorandum that this "loan bears 5 per cent interest and 1 per cent accumulated sinking fund, and is secured on a sufficient amount of the customs revenues of the Republic to provide 3,000,000 bolivars annually. No other loan enjoying equal or better rights until the 1896 loan by Venezuela has been entirely repaid."

The total amount of the unsecured British claims thus appears to be about £3,638,325, or about \$18,191,625, making the total claims of the two Governments nearly £6,000,000 or \$30,000,000.

In the adjustment of these claims the following advantages and preferences have already been conceded to the allies.

#### FIRST, TO GREAT BRITAIN.

1. Cash, £5,500, article 2, protocol.
2. Pledge of fresh arrangements for the payment of bondholders, with a definition of the sources of payment, article 6.
3. Exoneration from claims for seizure of Venezuelan vessels, article 8. (Appendix to Case of Venezuela, p. 172, et seq.)

## SECOND, TO ITALY.

1. Cash, £5,500, article 2, protocol. "As satisfaction of the point of honor."

2. Agreement to pay first-rank claims in full, without revision, 2,810,255 bolivars, article 3.

3. Pledge of fresh arrangements for the payment of bondholders with a definition of the source of payment, article 7.

4. Forced interpretation of the treaty of commerce and navigation, article 8.

5. Exoneration from liability to Venezuela for seizure of vessels and goods, article 9. (Appendix to Venezuelan Case, p. 175, et seq.)

## THIRD, TO GERMANY.

1. Cash, £5,500, article 2, protocol.

2. Agreement to pay in fixed, equal monthly instalments, beginning March 15 and ending July 15, 1903, without revision, 1,681,315.67 bolivars, article 2. All this has been paid.

3. Satisfactory arrangement of claims of bondholders and pledge of revenues therefor without prejudice to existing obligations, article 6.

4. Exoneration from claims for seizure of Venezuelan merchantmen, article 7. (Appendix to Venezuelan Case, p. 178, et seq.)

The first-rank claims of the allied powers have been satisfied. Italy has secured an agreement to pay in full 2,810,255 bolivars without the sanction of judicial revision. The allies, moreover, have secured an undertaking for a satisfactory arrangement, defining the sources of revenues for the payment of third-class claims, viz: "The claims of bondholders."

The claims left for payment, under the order of the tribunal, out of the 30 per cent assigned for this purpose, are the claims specified in article 3 of the British protocol of February 13, viz, claims preferred by the railway companies and by British subjects (other than the claims of the bondholders), which are given (Blue Book on p. 212) at £600,000; and under the Italian protocol, unrevised claims, 2,810,255 bolivars, and all the remaining Italian claims, except the claims of the bondholders; and under the German protocol, all the German claims other than those arising out of the civil wars of 1898-1900 (which latter are to be paid in cash or in monthly installments ending July 15, 1903), including the claims, amounting to 3,000,000 bolivars, resulting from the civil war of 1901-1903, the claims of the Great Venezuelan Railway Company, for 7,500,000 bolivars, for passage and freight, claims of the engineer, Carl Henckel, and the Caracas slaughterhouse claim; and the claims of other creditor states, under the protocols with those states.

Besides the advantages already obtained by the allies, they have gained one most important and unjust preference over the other creditor states. By the protocols of February 13, Venezuela admits her liability to the allied powers in all cases where the claim is for injuries to or wrongful seizure of property; thus making Venezuela responsible for uncontrollable and lawless acts of insurgents, regardless of the principles of international law and justice. On February 17, 1903, the protocol was signed between the United States and Venezuela. It contains no admission of liability of Venezuela for any claim whatever. The rule of decision, therein prescribed, is that the commission "shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation." The commission is therefore to decide every question on the high plane of international law and justice. All the other peace powers adopted the provisions of this protocol in the protocols they signed with Venezuela. The allies exacted and obtained from Venezuela further protocols of the same character and secured all the benefits of these provisions, in addition to those granted in the protocols of February 13, which made Venezuela liable for lawless acts of insurgents, even in distant and remote places, where the government was powerless to afford protection. By this harsh rule, Venezuela is made an insurer of the lives and property of foreigners against lawless action throughout the extent of Venezuela.

Such a liability would not be claimed by one great power against another. There is not a powerful American or European state that would give such a claim the slightest recognition.

Will the court then give preference in payment to claims of this character, over the claims of the peace powers, for the seizure of property by the titular government?

#### INTERPRETATION OF THE PROTOCOLS.

The protocols of May 7, 1903, are to be interpreted in the light of the antecedents.

On November 28, 1902, the French ambassador notified the British Government that a seizure of the resources of the Venezuelan customs would prejudice French interests, and on December 5 he was informed by Lord Lansdowne that "in any measures to which His Majesty's Government may resort for the purpose of enforcing their claims against the Venezuelan Government care will be taken that French interests are not prejudiced." (Blue Book, p. 158, No. 158, and p. 164, No. 165.)

On December 18, 1902, the British Government was notified by M. Cambon that "the Governments of the United States, Spain, and Belgium, having decided to claim most-favored-nation treatment for the settlement of all the demands for compensation made by their



citizens or subjects, the Government of the Republic have thought it right also to secure every guaranty for the interest of their nationals." (Blue Book, p. 179, No. 201.)

On December 14 Belgium gave a notice similar to that of France, and on December 19 received a similar assurance from His Majesty's Government.

Now, all of these notices, except that of Italy, were given and received, favorably and without objection, before the blockade was declared.

The ultimatums of the two governments are contained in the British Blue Book—the British ultimatum December 18, 1902, No. 190, page 177, and the German ultimatum December 22, 1902, No. 207, page 181. The two ultimatums are in substance identical.

They demand the payment, or a safe guaranty for prompt payment, of the first-rank claims. All other claims are to be submitted to arbitration, and the court of arbitration is to decide both on the validity of the claims and the means of their payment or guaranty.

On December 31, 1902, Mr. Bowen communicated the answer of President Castro. He recognized in principle the claims of the allies, and asked that Mr. Bowen be authorized to make arrangements for an immediate settlement of the claims, or for their reference to arbitration. (Appendix to Venezuelan Case, p. 158.)

On January 7, 1903, the Secretary of State communicated to Mr. Bowen the reply of the Italian Government referring to the two ultimatums, giving "its consent on condition that the claims of Italian subjects receive the same treatment as analogous claims of the other powers." (Appendix to the Venezuelan Case, p. 161.)

On January 7, 1903, Mr. Bowen communicated the answer of President Castro, accepting the conditions of Great Britain and Germany, and stated that the guaranty will be the custom-houses. (Appendix to Venezuelan Case, pp. 161, 162.)

The instruction of the Marquis of Lansdowne to Sir Michael Herbert, dated January 13, 1903, required the immediate satisfaction of the first-rank claims in the sum of £5,500; the submission to a mixed commission of the railway claims and those for injury to or wrongful seizure of property, estimated at £600,000, to be paid in cash or secured by adequate guaranty; the settlement of the claims of bondholders of the 1881 and 1896 loans by an arrangement which should include a definition of the sources from which the necessary payments are to be provided. (Blue Book, No. 234, pp. 211, 212.)

But there was no demand made for any separate or preferential payment or treatment of the claims of the allies over those of the other creditor states. And Mr. Bowen met their demands squarely. On January 23, 1903, he delivered a verbal note to the British ambassador, "proposing that all claims against Venezuela should be paid out

of the customs receipts of the two ports of La Guaira and Puerto Cabello, the percentage to be 30 per cent each month." (Appendix to Venezuelan Case, p. 163.)

On January 23, 1903, the British ambassador reported to Lord Lansdowne that "Mr. Bowen accepts without reserve the conditions laid down by His Majesty's Government. For the claims of the second category he proposes that 30 per cent of the receipts of the Puerto Cabello and La Guaira custom-houses should be made over to the powers every month; that 25 per cent of the customs receipts are already devoted to the maintenance of the local state government in which each port is situated and 13 per cent to the payment of the existing diplomatic claims. Adding to this the 30 per cent now promised, only 32 per cent would be left for expenses of the government and the payment of the army, and Venezuela could not possibly get on with less." (Blue Book, p. 217, No. 240.)

On the same day, January 23, the British ambassador communicated the answer of his Government to Mr. Bowen assenting to the submission of the second-rank claims to a mixed commission, but demanding their immediate payment or "a guaranty adequate to secure them." (Appendix to Venezuelan Case, p. 163, 164.)

And on the same day Mr. Bowen accepted those conditions. (Appendix to Venezuelan Case, p. 164.)

On the next day, January 24, the German and Italian embassies made substantially the same demands, except that the German note required that the mixed commission must decide "what guaranty will have to be offered for their settlement." (Appendix to Venezuelan Case, pp. 165-7.)

On the same day Mr. Bowen answered, agreeing to give the same guaranty as was given for the British and German claims. (Appendix to Venezuelan Case, p. 167.)

On January 24 the Marquis of Lansdowne inquired of Sir Michael Herbert: "Is it proposed that the 30 per cent should be paid by monthly instalments to the blockading powers only, or are the whole of the creditor powers also to share the benefit?" (Blue Book, No. 241, p. 217, 218.)

On January 25 Sir Michael Herbert answered that:

1. The value of the customs receipts of the two ports amounts to 18,000,000 bolivars yearly.
2. The total debt of Venezuela amounts to about 239,000,000 bolivars. This includes internal debt 94,000,000 and external debt 145,000,000.
3. Thirty per cent of the entire customs receipts of the two ports is offered by the Venezuelan Government.
4. Each of the creditor powers is to receive a share of the 30 per cent; 29,000,000 bolivars approximately is the amount of the total

claims of the other powers who are not engaged in the blockade. As to our claims of the first line, Mr. Bowen agrees that they shall be satisfied. (Blue Book, p. 219, No. 244.)

On January 26 Lord Lansdowne replied that the 30 per cent would yield £213,000, intended to meet not only the claims of all the powers for compensation, but also the entire foreign debt of Venezuela, £5,742,000; that the claims of the three powers engaged in the blockade will reach nearly £9,000,000 and those of nonblockading powers £1,148,514. He then adds that "we consider that the claims of the powers engaged in the blockade should not rank on the same line with other claims for compensation or by bondholders, and that some special arrangement should be made with regard to the former." (Blue Book, p. 219, No. 245.)

After all these negotiations Sir Michael Herbert communicated to Lord Lansdowne the text of Mr. Bowens agreement of January 27, "that Venezuela will pay 30 per cent of the total income of the ports of La Guaira and Puerto Cabello to the nations who have claims against her; that the said 30 per cent will be given exclusively to meet the claims mentioned in the recent ultimatums of the allied powers and the unsettled claims of other nations that existed when the said ultimatums were presented." (Blue Book, p. 220, No. 247.)

On January 28 Lord Lansdowne advised the ambassador that "His Majesty's Government can not admit that pledges given by Mr. Bowen to the powers which are not engaged in the blockade are binding on this country, and His Majesty's Government can not accept a settlement which would force them to place their claims on the same footing with those of the nonblockading powers." (Blue Book, p. 221, No. 251.)

Then came Mr. Bowen's memorable answer of January 30: "I object to paying first the claims of the allies and the claims of the other nations afterwards, because, first, I think it unjust and unfair and illegal to tie the hands of the said other nations for the period of five or six years that it would take to pay the claims of the allies; second, if I recognize that brute force alone can be respected in the collection of claims, I should encourage the said other nations to use force also; third, if the allied powers want preferential treatment they should have asked for it in the beginning and should not now propose it, after I understood clearly that all the conditions of the allied powers had been stated."

That the objection of Lord Landsdowne is untenable and that Venezuela has kept faith with the allies is shown conclusively by the protocols of February 13, which declare: "The Venezuelan Government, being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in article 3, and similar claims preferred by other governments, undertake to assign to

the British Government, commencing March 1, 1903, for this purpose, 30 per cent in monthly payments of the customs revenues of La Guaira and Puerto Cabello." (Protocols, Art. V.)

The issue thus raised by the British Government was of a formidable nature, in case a similar tone were taken by the other creditor States. It is this international peril in dealing with weak debtor States that will lend to your decision its deepest and most far-reaching influence upon creditor nations.

#### ADEQUACY OF THE GUARANTY.

No question was ever made of the adequacy of the guaranty until Mr. Bowen had made the assignment of the 30 per cent for the payment of all claims against Venezuela. France, the United States, Spain, and Belgium had given notice to the allies that they should claim, and Venezuela had promised that they should receive, most-favored-nation treatment. No sort of objection had been interposed to it until after the assignment had been made. Venezuela was placed between the devil and the deep sea—the war powers, on the one hand, demanding adequate guaranty and the peace powers, on the other hand, having equally and, in some respects, more meritorious claims, demanding most-favored-nation treatment.

That was the situation and Venezuela kept faith with all. Naturally she would not part with more of her revenues than the necessities of the situation imperatively demanded. But here was the imminence of a great peril. For the rights of the peace powers became now seriously involved; and immoderate exactions—exactions which could not be met without a sense of injustice on the part of the peace powers, and which might, if conceded, disable Venezuela to accord the same treatment to them as to the allies—those were the conditions which then confronted eleven nations; and most wise was the solution which Mr. Bowen suggested—a reference of the controversy to The Hague Tribunal.

Now who shall decide and how decide that the guaranty given is not adequate? Will the allies contend that it is inadequate because it does not secure the payment of the claims allowed by the mixed commissions, the moment they are allowed? Is it not the understanding, implied by all the negotiations and the protocols, that that guaranty is adequate, which assures the final payment of all the claims?

Delays for this purpose are implied, for they would occur even if the 30 per cent were first applied exclusively to the payment of the claims of the allies. But the claims of first rank, in justice, are those for wrongs done by violence to persons and property. These claims of the allies have already been paid. The rest of their claims—the railway claims, the slaughter-house claim, and all claims of this

order are, in their origin, of a speculative and contractual character. And speaking from the view point of the foreign office the justice, as diplomatic claims, is questionable.

It is not proven that the guaranty is not in fact adequate to meet all the claims.

A most carefully prepared statement is found in the case for Venezuela, showing the allowances of five important mixed claims commissions, amounting to less than 5 per cent of the total amounts claimed. Making a rough estimate, I should judge that when the work of the United States mixed claims commission at Caracas is finished its total allowances may amount to \$500,000, more or less; but I should be surprised if they amount to so much. When the work of all the commissions is ended and the result known it may turn out that the allies have raised an interesting but vain question.

Men who enter into contractual relations with the authorities of a foreign Government take a more or less gambling risk, depending upon the pecuniary ability, political stability, and character of the Government. Why, then, should their own Governments make good their ventures, their concessions and contracts, often obtained for a paltry consideration and by unmentionable means? They can afford to wait; they will not be the losers if they are not paid in full during the present generation. These considerations are applicable to all claimants who engage in business in unsettled countries. Every man who goes there is conscious of and voluntarily assumes the risks, and there are not a few of them who are diligent in seeking trouble in order to demand the intervention of their Government to secure an indemnity. They haunt its foreign office, and if their claims and representations are rejected they rush into the newspapers and pour out denunciations on their own Government. They get up agitations; they appeal to other members of their party, sect, or society, and threaten to overthrow the Government in power unless it takes up their cause.

They are disturbers of international relations; and the judgment of the court, which requires claimants to take payment of their judgments out of the fund, provided by Venezuela for that purpose, will be most salutary. In the large just sense of the term, the guaranty provided is adequate.

We contend, from the standpoint of strict law, that the decision of the question can not be doubtful. In point of fact, Venezuela assigned the 30 per cent of the customs revenues of the two ports to, and for the use and benefit of, all the creditor nations. If the assignment had been made to Great Britain, Germany, and Italy alone, and the other creditor states had asked to share in it, the case, in point of law, would have been different. But there is the actual contract—there is the security actually assigned by the debtor to all the cred-

itors. If a debtor makes an assignment of his property for the security of all his creditors, no court of bankruptcy, no court of equity will set it aside for the benefit of some, and to the exclusion of other, creditors. That would be to make a new contract, which no court has the power to do.

The allies have accepted the assignment. If they wished for a security to themselves alone, they should have declined to accept the security offered. If they wanted a larger security, a more adequate guaranty, they should have demanded it and refused the one offered.

They have taken the benefits of the contract—the payment in full of all their first-rank claims and other important advantages. They have by their acts accepted the contract, whose conditions were laid down in their ultimatums; and now they ask to repudiate another portion of the contract. Nor can they found any right on the expenses they incurred in the blockade, for, in their negotiations, they demanded compensation on that account from Venezuela, who refused it, and in that refusal the allies acquiesced. (Mr. Bowen to Sir Michael Herbert, April 2, 1903, Appendix to Venezuela's case, pp. 189–191.)

Here, then, is the actual contract, accepted and acted on by the allies and all the creditor nations. The court must either respect it, or it must set it aside and make a new contract. And what kind of a contract would or could the court make? Only one answer is possible. What would be the consequences of judicial action in making a contract for Venezuela which she could not have made without violating her promise to treat all alike?

If the allies had not accepted this contract, and not enjoyed the benefits of it; if they had demanded a larger guaranty, Venezuela could have kept faith with all by making a larger assignment of her revenues for the benefit of all. But the court can not do it. If the entire contract is not to be observed, then the money paid to the allies must be returned; no claims can be paid without revision; the assignment must be set aside; the mixed claims commissions must be set aside, and all of their awards vacated. For all of these stipulations are parts of one contract, which must be wholly kept or wholly rescinded.

The propositions we have advanced in this examination and in that submitted by Venezuela combine to establish the equal rights of the creditor States, whether they are viewed in the light of the negotiations and of the protocols, or are interpreted in the spirit which inspired the creation of the permanent court, and which, it is the hope of mankind, will forever preside over its deliberations.

The vindication of this principle is in the true interest of all the parties. Any other rule would eventually and inevitably lead to



resentments, reprisals, and conflicts between creditor States themselves. It is, therefore, impossible to exaggerate the importance of your decision, which, we confidently believe, will be responsive to the enlightened opinion of the civilized world, to the requirements of a comprehensive and farseeing statesmanship, and to the demands of international justice, equity, and peace.

Respectfully submitted.

WILLIAM L. PENFIELD,

*Agent and of Counsel for the United States.*

THE HAGUE, October 18, 1903.

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### PRINTED ARGUMENT OF HERBERT W. BOWEN.

The demand of the allied powers for preferential treatment indicates a complete indifference to the rights of others.

Nations, like individuals, must respect the rights of others, or be prepared to incur the peril of being forced to respect them.

Municipal law protects the individual and can punish violations of his rights.

International law, in the same way, protects the nation in principle, but in practice the nation must protect itself unless it can induce some third nation to intervene, or can get its cause submitted to arbitration.

There can be no doubt that if the allied powers had seized the revenues of Venezuela and appropriated them for the exclusive purpose of paying to themselves the amount of their own claims, the other claimant nations would have been perfectly justified in maintaining that the allied powers had trampled on their rights by appropriating to themselves revenues out of which the other claimant nations expected to have their claims paid.

That consideration prevented the allied powers from insisting on appropriating to themselves the 30 per cent of the revenues of La Guaira and Puerto Cabello, and forced them to bring their claims to The Hague Tribunal.

In other words, the allied powers realized that if they insisted on taking the whole 30 per cent by force the other claimant nations would be justified in trying to prevent them by force from carrying out their object.

To avert, therefore, the possibility of war, they consented to present the matter to The Hague Tribunal for decision.

It is a wise and creditable step for them to take, for now this tribunal is afforded an opportunity to establish a precedent which will decide the question as to whether or not a claimant nation, hav-

ing undertaken a war against a debtor nation, may attempt to settle its claims in such a way as to derogate from the rights of other claimant nations, and thus provide them with a reasonable cause of complaint that might induce them to maintain their rights by force.

Forcible methods beget forcible methods in such a case as this, and peaceable methods beget peaceable methods, all contentions and arguments of the allied powers to the contrary notwithstanding.

Why the allied powers resorted to warlike measures is a question which even they can not answer in a creditable way. They never expected to have to answer it. They expected simply to demand and to receive. They never counted on serious opposition; but they met it. Venezuela could not consent to granting them preferential treatment over her other creditors who had pursued peaceable methods with her.

Was she not bound to be grateful to them? Is it not right that a nation should encourage other nations to treat her with respect and amity?

The allied powers virtually say "No;" but Venezuela and the United States answer "Decidedly yes."

What is to become of the comity of nations if friendly treatment is to be put below insult and injury? It is the peculiar duty of nations to be friendly; for the nations constitute a family, and are expected, consequently, to be patient with one another and long-suffering. In this very case Venezuela and the United States are entirely free from all animosity. They respect and honor not only the nations associated with them, but also the allied powers. The only distinction we make is that in this controversy the allied powers have made a mistake and are demanding of The Hague Tribunal a right to which they are not entitled. Even if all the claims the allied powers had against Venezuela were just, they were in duty bound to wait for a proper moment before trying to collect them. What moment did they select? The moment when Venezuela was most preoccupied; when she was straining every nerve to suppress a revolution; when she needed all her revenues to supply herself with the sinews of war. Whoever heard before of presenting a bill on a battle field?

And what was the bill for? Claims, just and unjust, reasonable and ridiculous—all mixed together, and none of them bearing the approval of a court of justice or a board of award.

If lack of tact and good sense could be punished, Venezuela would be entitled to exemplary damages from the allied powers far in excess of even their combined claims. Venezuela, be it known, had never refused to pay any just claim that might be brought against her at the proper time. She was anxious to wipe out her foreign indebtedness; but she felt she must delay doing so until she had reestablished peace within her territory. Her position was sound, strong, and

sensible. It deserved the respect and sympathy of the civilized world. Her efforts now to secure equality of treatment for all of her creditors are among the noblest efforts ever put forth by any nation, great or small. They do honor to her; they do honor to mankind; and they do honor to the principle of justice, which the allied powers are now attacking before this tribunal in demanding that they be accorded preferential treatment.

Justice may be insulted, attacked, and defeated again and again; but in the end she will always triumph, and lead her enemies as well as all the rest of mankind to higher and nobler conceptions of duty, equity, and right.

HERBERT W. BOWEN,  
*Of Counsel for the United States.*

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APPENDIX.

No. 1.

CHARLES AUGUSTINUS HENRI BARGE, LL. D., *Umpire.*

WILLIAM E. BAINBRIDGE, *Commissioner on the part of the United States.*

Dr. JOSÉ DE PAUL, *Commissioner on the part of Venezuela.*

THE UNITED STATES AND VENEZUELAN CLAIMS COMMISSION,  
*Caracas, Venezuela, July 18, 1903.*

The Hon. JOHN HAY, *Secretary of State, Washington, D. C.*

SIR: I have the honor to inclose herewith copies of decisions and awards in the following claims:

- No. 1. Ford Dix.
- No. 2. Catalina V. and José A. Páez.
- No. 3. Corinne R. de Garmendia.
- No. 4. Coro and La Vala Railway and Improvement Company.
- No. 7. Boulton, Bliss, and Dallet.
- No. 8. Legal representatives of Leonard B. Smith.
- No. 9. A. T. Stubbs.
- No. 10. J. S. Emery & Co.

The original signed awards are of course filed with the secretaries of the commission and will be transmitted to the Department by the agent with his final report. The inclosed copies are forwarded solely to enable the Department to be informed as to the nature and progress of the work of the commission.

I have the honor to be, sir, your obedient servant,

WILLIAM E. BAINBRIDGE.

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The United States of America on behalf of Ford Dix, claimant, v. The Republic of Venezuela. No. 1.

DECISION AND AWARD.

The commission awards to the claimant the sum of eleven thousand eight hundred thirty-seven and 53/100 dollars (\$11,837.53) in U. S. gold.

Opinion by BAINBRIDGE, *Commissioner.*

Catalina V. and José A. Páez, claimants, v. The Republic of Venezuela. No. 2.

## DECISION AND AWARD.

The commission awards to the claimants the sum of two thousand five hundred fifty dollars (\$2,550) in U. S. gold.

Opinion by Dr. PAUL, *Commissioner*.

Corinne B. de Garmendia, sole legatee of Carlos G. de Garmendia, deceased, claimant, *v.* The Republic of Venezuela. No. 3.

## DECISION AND AWARD.

The commission awards to the claimant the sum of twenty-nine thousand three hundred sixty-three and 64/100 dollars (\$29,363.64) in U. S. gold.

Opinion by BAINBRIDGE, *Commissioner*.

The Cora and La Vela Railway and Improvement Company, claimants, *v.* The Republic of Venezuela. No. 4.

## DECISION AND AWARD.

The commission awards to the claimants the sum of sixty-one thousand, one hundred four and 70/100 dollars (\$61,104.70) in U. S. gold.

Opinion by Dr. PAUL, *Commissioner*.

Boulton, Bliss & Dallett, claimants, *v.* Venezuela. No. 7

## DECISION AND AWARD.

The commission awards to the claimants the sum of twenty-seven thousand six hundred forty-four and 23/100 dollars (\$27,644.23) U. S. gold.

Opinion by Dr. PAUL, *Commissioner*.

The legal representatives of Leonard B. Smith, deceased, claimants *v.* Venezuela. The Alliance. No. 8.

## DECISION AND AWARD.

The commission awards to the claimants the sum of two thousand nine hundred twenty-eight and 33/100 dollars (\$2,928.33) in U. S. gold.

Opinion by BAINBRIDGE, *Commissioner*.

A. T. Stubbs, claimant, *v.* Venezuela. No. 9.

## DECISION.

The evidence presented in support of this claim being insufficient to establish any liability on the part of the Government of Venezuela for the loss complained of, the claim is hereby disallowed.

Commissioner on the part of Venezuela.

Commissioner on the part of the United States of America.

## ATTEST TO DECISION.

*President.*

Attest:

*Secretary on the part  
of Venezuela.**Secretary on the part of the  
United States of America.*

Delivered January 10, 1903.

J. S. Emery &amp; Co., claimants, v. Venezuela. The Mark Gray. No. 10.

## DECISION.

The commission disallows the claim.  
Opinion by BAINBRIDGE, Commissioner.

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OFFICE OF THE AGENT OF THE UNITED STATES  
BEFORE THE UNITED STATES AND VENEZUELA CLAIMS COMMISSION,  
Caracas, Venezuela, Gran Hotel, July 25, 1903.

The honorable the SECRETARY OF STATE.

SIR: Referring to my letter of the 18th instant, I have the honor to advise you that the following claims have been presented to the commission:

On July 21 the second claim of the American Electric and Manufacturing Company (No. 49); on the same date the second claim of Lorenzo Mercado (No. 50). On July 21 the commission made an award in the American Electric and Manufacturing Company's claim (No. 11) for \$2,000 United States gold. On the same date an award was made in the claim of Isaac J. Lasry (No. 12) for \$2,000 United States gold.

Very respectfully,

ROBERT C. MORRIS.  
*Agent of the United States.*

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No. 2.

*Sir Edward Thornton to Mr. Evarts.*

No. 346.]

WASHINGTON, June 17, 1880.

SIR: In compliance with an instruction which I have received from Earl Granville, I have the honor to inform you that the British vice-consul at Port-au-Prince, Haiti, has reported the erection of two light-houses in the bay of Port-au-Prince and the establishment of light dues in connection therewith.

As it appears that the light dues to be levied on foreign merchant ships will be double the amount of those to be levied on Haitian vessels. Mr. Stuart has been instructed to urge that British ships should be put on the same footing as Haitian in this respect, and to endeavor to secure the cooperation of his foreign colleagues in any representations which he may make to the Haitian Government on the subject. Earl Granville had therefore instructed me to bring the matter to the attention of the Government of the United States, and to

ask if it be willing to take steps in support of the action which Her Majesty's Government has taken with a view to securing the equal treatment of vessels of all flags, that it would address similar instructions to its representatives at Port-au-Prince.

I have, etc.,

EDW'D THORNTON.

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*Mr. Hay to Sir Edward Thornton.*

No. 347.]

DEPARTMENT OF STATE,

Washington, June 19, 1880.

SIR: I have the honor to acknowledge the receipt of your note of the 17th instant, inviting the attention of this Government to the discriminating light dues now levied at Port au Prince by the Government of Haiti on foreign merchant vessels.

In reply I beg to inform you that the light dues to which your note relates formed the subject of a recent dispatch from the minister resident of the United States at Port au Prince, and that his representations in regard to the matter correspond substantially with those which you state Her Majesty's Government has received. This Government regards the light dues now levied by the Haitien Government at Port au Prince as unjust and injurious to the commercial interests of the foreign powers concerned, and the President is, therefore, quite willing to cooperate with Her Majesty's Government in making all proper efforts, which may be found practicable, to induce the Haitien Government to place vessels of all flags upon an equal footing with respect to the light dues in question. An instruction in this sense will accordingly be given to the minister resident of the United States at Port au Prince with as little delay as possible.

I have, etc.,

JOHN HAY,

*Acting Secretary.*

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[Inclosure in No. 297.]

*Mr. Langston, American minister at Port au Prince, to Mr. Archin.*

No. 107.]

LEGATION OF THE UNITED STATES,

Port au Prince, Haiti, July 14, 1880.

SIR: After presenting to you the thanks of this legation for the copy of the "Annonce Hydrographique" which you did the honor to transmit, under cover of your note of the 29th of April last, I have the honor to advise you that it is the judgment of my Government that the discrimination which is made between your own and foreign vessels as to the payment of light dues, the former being charged 3 and the latter 6 cents per ton for each voyage, does not accord with the wise considerations of commercial reciprocal obligation which ought always to be recognized and cultivated by the great friendly powers of the world.

In the observance of the suggestions of such obligation, and in accordance with the principles of enlightened international reciprocity which secure to all nations adopting them permanent advantage, I have the honor now to ask that the provisions in the premises be so modified as to put all American vessels, as far as the administration of the dues referred to is concerned, upon the same footing with your own vessels, and that such service be administered in such regard with impartiality.

Be pleased to accept, etc.,

JOHN MERCER LANGSTON.



*Case of Robert Nortz.*

On October 15, 1898, Secretary Hay instructed Mr. Powell, our minister at Haiti, as follows: "I inclose copy of a letter from Robert Nortz, of Port au Prince, claiming to be an American citizen, who alleges that he bought \$5,688 of 'titles' issued by the Haitian Government, that that Government has declined to pay them in cash, and has directed that they shall be converted into an interior debt at the rate of 50 per cent of their nominal value. He states that he has ascertained that the Government has paid \$300,000 of those 'titles' in full to favored holders, to the exclusion of Americans.

"You will ascertain whether the complainant is an American citizen, and if so, investigate and report as to the correctness of the facts alleged.

"If the Haitian Government is practicing discrimination against American citizens in the payment of these 'titles,' you will protest, and insist that the same equitable treatment shall be accorded to them as to other holders of the 'titles.' "

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*Discrimination in the "Weyman & Co." in Haiti.*

On January 5, 1900, the Secretary of State instructed Mr. Powell, the American minister at Haiti, as follows:

"I have to acknowledge the receipt of your Nos. 685 and 686 of the 15th ultimo, in which you report the proposition of the Haitian Government to settle the claims of Mr. Bruel and Messrs. Weyman & Co., by issuing to the claimants bonds of the consolidated debt.

"In reply I have to say, that while the Government of the United States ordinarily observes in practice the rule of international law not to interfere diplomatically in support of merely contractual claims of its citizens against foreign states, it would regret to see the friendly Republic of Haiti practice any discrimination by paying the contractual claims of citizens or subjects of other states, while refusing to pay in the same manner equally just and meritorious claims of American citizens. If claims of the same order, in the hands of citizens or subjects of foreign governments, are paid by Haiti, the Government of the United States confidently expects that the same impartial treatment will be shown to its citizens; and it believes that the communications of these views to the Haitian Government will be sufficient to insure such treatment. But unless such discrimination is practiced, this Government will not depart from the rule of international law that those who enter into contractual relations with a foreign government must rely on its good faith and on the remedies provided by its own laws for the enforcement of their claims.

"You will furnish the Haitian minister of state a copy of this instruction."

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On July 3, 1900, Mr. Powell was again instructed "to call the attention of the Haitian Government, in like manner as you did in the Bruel case, to the two specific cases of alleged discrimination in the manner of treatment by the Haitian Government of the claim of F. Hermann & Co., and of the French claim for \$125,000, those claims being stated in the letter of C. Lyon Hall for Charles Weyman to you, which is inclosed in your No. 768, and you will request said Government to explain the alleged discrimination.

"You may add that this Government will not be the one to set the example of requiring a friendly state to pay an ordinary contractual claim, but in view

of its well-known friendship and consideration for the Republic of Haiti, it confidently expects equality of treatment for its own citizens with the citizens or subjects of other states.

"You will add that if the facts are as represented by Mr. Hall, an explanation seems to be fairly due."

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*Discrimination in the "Bruel" claim in Haiti.*

On April 12, 1899, the Secretary of State instructed Mr. Powell, our minister at Haiti: "The Department is in receipt of a letter from Becker & Co., under date of April 3 instant, in which, referring to the claim of Mr. Bruel, it is stated that bonds of the very same loan of March, 1889, held by foreigners, have been paid by the Haitian Government, and that some of those bonds are being paid off by installments through the good offices of the French legation at Port au Prince."

"This statement, if accurate, seems to be corroborative of reports made to you, as shown in your dispatches to the Department."

"In the Department's No. 329 of March 27, 1899, you were instructed that this Government would not lend its aid in support of Mr. Bruel's claim. This instruction was grounded on the rules announced by Secretary Bayard, set out in that instruction. If, however, the Haitian Government denies the validity of this claim, and yet admits the validity of bonds of the same issue, and in all respects of the same essential legal character, by payment thereof to citizens of France, you are instructed, by the use of good offices, to bring the same to the attention of the Haitian Government and request an explanation thereof, and in view of the friendly relations existing between the two Governments to express the regret this Government would feel at the practice of such discrimination against American citizens."

"This instruction will apply to the other claims of the same character as Mr. Bruel's owned by American citizens."

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*Note from Lord Pauncefote.*

On June 25, 1900, Lord Pauncefote, British ambassador at Washington, sent the following note to Secretary Hay:

"I venture to recall to your attention the subject of an instruction sent by you to the United States minister in Guatemala with regard to the recent bonding law. I was informed at the Department of State on a recent occasion that the United States minister in Guatemala has reported that he had carried out his amended instructions with regard to this law, and had warned the Guatemalan Government that the United States Government must insist upon American citizens being treated on the same footing as other creditors, whether foreign or native, and he added that he had not been able to discover any case in which preferential treatment had been accorded to a native creditor."

"I have now the honor to inclose a copy of a dispatch from the British minister in Guatemala to the Marquis of Salisbury, citing instances in which such preferential treatment has occurred in the cases of Guatemalan civil and military officials in respect of salaries, pensions, etc., and of local banks."

"These instances would seem to have escaped the notice of the United States minister, and Lord Salisbury fears that there may be some risk that the representations of the British minister with respect to the bonding law, which it is

understood will shortly be enforced to the detriment of British interests, may therefore fail to receive that support from his American colleague which it was hoped that the instructions of the United States Government would insure.

"The Marquis of Salisbury desires me to acquaint you with these facts in order that any misapprehension in the matter may be avoided."

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[Inclosure.]

GUATEMALA, *May 11, 1900.*

MY LORD: Your Lordship's dispatch No. 24 of the 12th ultimo, received yesterday contains as its inclosure a dispatch from Lord Pauncefoot, No. 105, of the 30th of March, in which his excellency states that he is informed that the United States minister at this capital has officially reported to his Government that he has carried out his amended instructions in regard to the bonding law of Guatemala and "has warned the Government that the United States Government must insist upon American creditors being treated upon the same footing as other creditors whether foreign or native," but he adds "that he has not been able to discover any case in which preferential treatment has been accorded to a native creditor."

The following exceptions to the bonding law are provided for under Articles II and III:

"ARTICLE II. Will be excepted the salaries or allowances due to civil and military officials and pensions and retiring allowances of various kinds.

"ARTICLE III. Credits existing in the banking establishments, not mobilized according to decree 589, are included in this law, provided no satisfactory arrangement is arrived at between those establishments and the Government as to the form of amortization."

Since the 29th of April, 1899, when the bonding law in question was promulgated, arrears of salaries and pensions have been paid off at regular intervals.

Government officials, both civil and military, who are undoubtedly native creditors, have therefore been accorded preferential treatment.

In virtue of a contract entered into between the Government and the banks the latter have received the sum of \$3,394,261.04 for credits prior to the date of the law. The banks are purely native establishments and they have been accorded preferential treatment as above.

To me it is, therefore, plainly discoverable that native officials and native banks with their native shareholders, all native creditors of the Government, have been accorded preferential treatment as compared with all foreign creditors. In all the above cases the debts were incurred by the Government before the 8th of February, the date fixed by the law after which credits were not to be bonded.

I might not have thought it necessary to point out that my view in regard to the preferential treatment of native creditors differs from that of Doctor Hunter, had it not been for the fact that it is feared that the bonding law that had been practically in abeyance since the date of its promulgation, is now about to be enforced in a very stringent manner.

I have, etc.,

C. JENNER,  
*British Minister.*

## No. 3.

DEPARTMENT OF STATE,  
Washington, September 21, 1903.

WILLIAM L. PENFIELD, Esq.,

*Hôtel du Vieux Doelen, The Hague, Holland.*

SIR: I transmit herewith a statement showing the dates of the organization and sitting of the United States and Venezuelan mixed claims commission of 1889, and the commission for the arbitration of the claim of the Venezuelan Steam Transportation Company against Venezuela (convention of 1894), the names of the parties in whose favor awards were made, the amount of each award, and the amounts due and unpaid on the awards.

I am, sir, your obedient servant,

ALVEY A. ADEK,  
*Acting Secretary.*

[Inclosures as above.]

SEPTEMBER 21, 1903.

*Statement of the Venezuelan indemnity prepared at the request of the solicitor of the Department of State, Hon. William L. Penfield, for his information at The Hague, and transmitted to him this day.*

|   |              |
|---|--------------|
| Total award made to the United States claimants (42 certificates),<br>by a mixed commission, organized September 3, 1889----- | \$659,524.31 |
| Balance principal due June 15, 1901-----  | 58,416.85    |
| Interest due June 15, 1901-----   | 1,722.10     |
| Interest on \$58,416.85, at 5 per cent from June 15, 1901, to June<br>30, 1903-----   | 2,920.84     |
| Balance due -----   | 63,059.70    |

(The above figures are approximate, as the exchange on subsequent payments may amount to one-half of the accrued interest.)

VENEZUELAN STEAM TRANSPORTATION COMPANY.

|   |              |
|---|--------------|
| Award made to the United States for the Venezuelan Steam Transportation Company, under convention ratified by the President of Venezuela, June 30, 1894, and by the President of the United States, July 1, 1894----- | \$141,500.00 |
|---|--------------|

The following installments and interest under the above award are still unpaid:

|  |            |
|--|------------|
| Due September 15, 1901-----                            | \$3,537.50 |
| Due December 15, 1901-----                             | 3,537.50   |
| Due March 15, 1902-----                                | 3,537.50   |
| Due June 15, 1902-----                                 | 3,537.50   |
|  | 14,150.00  |
| Interest due from June 15, 1901, to June 30, 1903----- | 1,444.48   |
| Balance due -----                                      | 15,594.48  |

RECAPITULATION.

|  |             |
|--|-------------|
| Venezuelan indemnity (general)-----          | \$63,059.79 |
| Venezuelan Steam Transportation Company----- | 15,594.48   |
| Total due -----                              | 78,654.27   |

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PART V.

Correspondence Respecting the Affairs  
of Venezuela.

(British Blue Book, No. 1, 1903.)





## CORRESPONDENCE RESPECTING THE AFFAIRS OF VENEZUELA.

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*Colonial Office to Foreign Office—(Received March 18).*

No. 1.]

DOWNING STREET, *March 16, 1901.*

SIR: I am directed by Mr. Secretary Chamberlain to transmit to you, for the consideration of the Marquess of Lansdowne, the accompanying copy of a dispatch from the governor of Trinidad, reporting the seizure of persons and property of certain individuals, some of whom are British subjects, on the island of Patos, being part of the colony of Trinidad, by soldiers from the Venezuelan gunboat *Augusto*.

2. His lordship will, no doubt, cause serious representations to be at once addressed to the Venezuelan Government on the subject of this grave outrage.

I am, etc.,

C. P. LUCAS.

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[Inclosure 1—Extract.]

*Governor Sir A. Moloney to Mr. Chamberlain.*

GOVERNMENT HOUSE, *February 24, 1901.*

I have the honor to report that on the 22d ultimo the Venezuelan gunboat *Augusto*, under the command of General Velutini, landed in two boats a force of some 20 Venezuelan soldiers, under the command of Col. Enrico Torres, on the island of Patos, or Goose Island, in the Grand Bocas, such island being British territory and part of the colony of Trinidad and Tobago. This armed force seized 4 boats belonging to peaceful traders, the crews of which had taken refuge from rough weather on the island, confiscated the cargoes and valuables found in the boats, and carried away some ten or eleven persons whom they captured, leaving on the island, without food or water or means of escape, some 12 other persons who had escaped into the scrub.

Of the boats seized, one was the property of a British subject named Edward Brown, a resident of Trinidad. The other three were Venezuelan boats, but one had three British subjects as passengers.

The names of the British subjects who were carried away by the *Augusto* were: Mrs. Jones, Dolphus, Domingue, Montout, Graham, Maxwell, Manto(?), and George. Of these, Mrs. Jones was landed at Yacua and returned to Trinidad, George was landed at Mapiro, and John (Manto or Graham?) at Guiria.

I inclose statements made on oath before the harbormaster on the 25th and 26th January by 5 of the men. Also a joint report by the attorney-general (the Hon. N. Nathan, Q. C.) and the harbormaster (Captain Saunders). Also a statement which was volunteered by the Venezuelan consul (Mr. J. Arralz) to the colonial secretary (Sir C. C. Knollys) on the 25th January, which was the day on which this occurrence was first heard of at Port of Spain. This statement was immediately written down by the colonial secretary.

To satisfy myself on the position, I took advantage of the presence here of Vice-Admiral Sir Frederick Bedford, the commander in chief of the North American and West Indian Squadron, to whom I have shown the correspondence, and accompanied by the colonial secretary and the deputy inspector-general of police, visited in His Majesty's ship *Quail* the island of Patos, on which I landed on the 4th instant, when I found it uninhabited and with no house.

Very serious notice should be taken of this incident, as otherwise neither life nor property will be safe on those parts of Trinidad which are nearest to Venezuela.

On the 31st January I forwarded to the chargé d'affaires at Caracas (Mr. A. C. Grant Duff) copies of the inclosures to this dispatch.

FEBRUARY 27, 1901.

P. S. I add a report by the colonial secretary (Sir C. C. Knollys) of an interview which took place to-day between him and the Venezuelan consul under my instructions.

FEBRUARY 28, 1901.

P. S. I also inclose a copy of a memorandum by the attorney-general forwarding a further statement by a woman named Greigo Martínez, respecting the occurrences at Patos on the 22d January.

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[Inclosure 2.]

*Statement of Inocente Firmin.*

I, Inocente Firmin, native of Carupano, Venezuela, carpenter, make oath and say as follows:

I was a passenger on board a boat coming from Guiria to Port of Spain; there was no cargo on board, but there were three other boats in company with us having cargoes of cocoa.

On Monday the 21st January, about midnight, we reached the island of Patos and landed for the purpose of cooking our food and to wait the tide to come up to Port of Spain.

On Tuesday at 8 a. m. the Venezuelan guardacosta *Augusto* laid off Patos and hailed us, and told us to send one of the boats so that they might give us a guaranty to proceed. We did not send the boat; we told the *Augusto* that we were in foreign waters.

We waited there, and at about 8 p. m. sent two boats to the shore with men, where we were. On seeing them about 12 of us ran in the bush, and the men from the *Augusto* took 11 men and 2 women prisoners. I do not know what has become of them. The *Augusto* then went away. At about 10 o'clock on Wednesday night a boat was passing Patos, and we called out to the men in it, and they took in 4 of us and brought us to Port of Spain; the boat could not carry any more, having 4 men on board as crew.

We paid the boat \$15 to bring us to town. About six or eight of the total number belong to Trinidad, about four or five of whom were taken on board the *Augusto*; one of the latter was a woman.

INOCENTE FIRMIN.

Interpreted and explained to the within-named Inocente Firmin in Spanish, and he appeared to understand the same.

J. C. LYON, Jr.

Sworn to at the harbor master's office in the town of Port of Spain this 25th day of January, 1901.

Before me:

JAMES B. SAUNDERS,  
*Harbormaster and J. P.*

HARBORMASTER'S OFFICE, *January 25, 1901.*

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[Inclosure 3.]

*Statement of Edward Brown.*

I, Edward Brown, a native of Trinidad, make oath and say:

On Monday, the 21st instant, at about 6 p. m., I left Mapire, Venezuela, to come to Trinidad in a boat, with 7 persons all told, 8 bags of cocoa, my clothes, and \$38.08. At about 4 a. m. on Tuesday I arrived at Patos. About 6 a. m. a Venezuelan guardacosta passed, and seeing us they remained cruising about the whole day. Being afraid to leave the island while the guardacosta was cruising around, I hauled my boat ashore. About 7 a. m. a boat with soldiers came ashore, and they took my boat and cargo. At that time I was hiding in the bush. When they left, I returned to the shore to see if they had left anything, but another boat came, and they took what the others had left.

The soldiers did not tell me anything, as I did not give them a chance, being in hiding during the whole time they were on the island.

EDWARD (his x mark) BROWN.

Witness:

W. J. KIRCALDIE.

Interpreted and explained to the within-named Edward Brown in patois, and he appeared to understand the same.

W. J. KIRCALDIE.

Sworn to at the harbor master's office, in the town of Port of Spain, this 26th day of January, 1901.

Before me:

JAMES B. SAUNDERS,  
*Harbor Master and J. P.*

HARBOR MASTER'S OFFICE, *January 26, 1901.*

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[Inclosure 4.]

*Statement of Domingue Rich.*

I, Domingue Rich, a native of Trinidad, make oath and say:

On Monday, the 21st instant, at about 6 a. m., I took passage from Mapire to Trinidad in a boat captained by Edward Brown, with my clothes and \$25

in cash. At about 4 a. m. on Tuesday we arrived at Patos. And about 6 a. m. we saw a Venezuelan guardacosta cruising around. About 7 p. m. a boat came ashore with about 20 soldiers. On seeing them, being afraid they would take me prisoner, I escaped inland, and they took all the boats and cargoes. About 8 p. m. they returned and took some prisoners, and again left for the steamer. I do not know how many prisoners they took.

I have lost all my money and clothes, which the Venezuelans have taken.

DOMINGUE (his x mark) RICH.

Witness to mark :

W. J. KIRCALDIE.

Interpreted and explained to the within-named Domingue Rich in patois, and he appeared to understand the same.

W. J. KIRCALDIE.

Sworn to before me at the harbor master's office, Port of Spain, this 26th day of January, 1901.

Before me :

JAMES B. SAUNDERS,  
*Harbor Master and J. P.*

HARBOR MASTER'S OFFICE, *January 26, 1901.*

---

[Inclosure 5.]

*Statement of Alfred Pierre.*

I, Paragua, alias Alfred Pierre, a native of India, who arrived here as a child some forty years ago, and worked as a laborer at various places for eight years, when I commenced trading to Venezuela, make oath and say :

On Monday the 21st instant, I left Mapire, Venezuela, to come to Trinidad, in a boat with 4 persons and 10 bags of cocoa. I also had \$5 in cash and my clothes. On Tuesday, at about 5 a. m., I disembarked at Patos, as I saw the *Augusto*, a Venezuela guardacosta, and was afraid they would take me prisoner.

Later a boat with 3 men put off from the *Augusto* and came ashore. They called upon me to surrender, but I refused to as I was in British waters. They then left for reinforcements and returned with about 20 armed soldiers. Seeing them I escaped inland, and they seized my boat, cargo, clothes, and the \$5 which I had left in the boat.

ALFRED (his x mark) PIERRE.

Witness :

W. J. KIRCALDIE.

Interpreted and explained to the within-named Paragua, alias Alfred Pierre, in patois, and he appeared to understand the same.

W. J. KIRCALDIE.

Sworn to at the harbor master's office in the town of Port of Spain this 26th day of January, 1901.

Before me :

(Signed) JAMES B. SAUNDERS.  
*Harbor Master and J. P.*

HARBOR MASTER'S OFFICE, *January 26, 1901.*

[Inclosure 6.]

*Statement of Felix Aceituno.*

I, Felix Aceituno, a native of Guiría, Venezuela, make oath and say:

On Monday, the 21st instant, at about 6 p. m., I left Mapire in my boat for Trinidad. I had as cargo 14 bags of cocoa, also my clothes and \$150 in cash. At about 4 a. m. I saw a guardacosta, and, during the whole day, she remained cruising about the island.

About 5 p. m. they sent a boat, commanded by one Henrique Torres, ashore with 3 men, and they told us to go on board with them. This we refused to do as we were on British soil, and they said if we would not go they would take our boats—which they did, and mine was the first taken.

About 6.30 p. m. they returned with two boats and about 20 armed soldiers, and they collected and took away everything they could find, even our food and water, and told us they would leave us there to die of hunger and thirst.

During the whole night and until 4 o'clock the next morning the soldiers remained on guard ashore. They then left us taking everything with them.

FELIX ACEITUNO.

Interpreted and explained to the within-named Felix Aceituno, in patois, and he appeared to understand the same.

W. J. KIRCALDIE.

Sworn to at the harbor master's office in the town of Port of Spain this 26th day of January, 1901.

JAMES B. SAUNDERS,  
Harbor Master and J. P.

HARBOR MASTER'S OFFICE, January 26, 1901.

[Inclosure 7.]

*Report of attorney-general and harbor master.*

HONORABLE COLONIAL SECRETARY: We beg to report that we have this day examined separately, through interpreters, the following witnesses:

Edward Brown, Nieves Bello, Felix Aceituno, Inocente Firmín, Ángel García, Josa Rivas, Elías Sánchez, and Pedro Cortez, and one lady who spoke English, Elvelina Jones.

It appears from the evidence of all these persons (transcript of the shorthand notes of which will be forwarded in due course) that on the 21st instant four boats, three Venezuelan and one belonging to a British subject named E. Brown, were at Patos waiting for the tide, on their way to Port of Spain, laden with cocoa. There were several passengers on board. There is no reason to suppose that any one of them was connected with the revolution, or had escaped as a belligerent from hostilities now being carried on. The boats were of the class which carry on the usual traffic between Port of Spain and the neighboring ports of the Republic, and may or may not be in the habit on their outward voyage of attempting to smuggle goods into Venezuela; but on this occasion they appeared to have been simply carrying cargo and passengers in the ordinary way to Port of Spain, and to have been waiting at Patos for the tide to bring them up. Something like 25 people altogether were sailors and passengers in the boats, several of whom were British subjects.

There is no doubt that early in the morning of the 22d instant a vessel known as the *Augusto*, belonging to the Venezuelan Government, with one Velutini in command, appeared off the cove at Patos, and remained there until the next morning close inshore. There is also no doubt that about 3 o'clock in the afternoon of the 22d, one Enrico Torres, described as a colonel, summoned the people then on shore to come on board the *Augusto*, and that the persons on shore declined to comply with this demand, alleging that they were on British territory. That later on in the evening, the same Torres with two boats and some 20 soldiers of the Venezuelan army landed on the island of Patos and proceeded to carry out their threats, by removing the boats, collecting the cargo, and moving it on board the *Augusto*. About one-half of the party fled into the woods, and the remainder were compelled to get on board the *Augusto*. Two women and one sick boy were allowed to land at a place known as Yaqua on the Venezuelan coast, from where one person, Elvelina Jones, has managed to make her escape. From her evidence it appears that the remaining persons on board the *Augusto* were compelled to sign a paper which was described by this witness as a statement that they had come on board voluntarily; which statement, as far as we are able to ascertain, is entirely untrue.

There is no doubt, if the evidence of these persons can be believed, and we can see no reason for disbelieving it, that some nine or ten people, British subjects for the most part, were taken by the steamship *Augusto* under the command of Velutini, by Torres, said to be a colonel in the Venezuelan army, and as to the whereabouts of these people we have no evidence, though it is believed that one has escaped and is in this island.

The island of Patos is British territory, and is so stated to be in the communication made by the Venezuelan consul to you. With regard to that communication there is no evidence before us that any person among those on board of the boats were revolutionists, or were chased by any gunboat, or that any revolutionists forced the boats to put into Patos, and it is certainly not true that the boats voluntarily approached the *Augusto*, and reported the matter, and explained that they were forced by superior numbers to land at Patos. For the whole of that statement, so far as we can ascertain, there is not the slightest ground of truth whatever.

It is stated by the witnesses that the crew of the *Augusto* appropriated one of the boats, the smallest, and cast the others adrift in the gulf; but the evidence is not specific as to this. We are not aware of any reason for the suggestion that Patos is made the point of departure for revolutionists. As far as we can ascertain none of these people had anything to do with the disturbances at present raging in the Republic, but there may be some ground for this assertion of which we are at present ignorant. The acts of the commander of the *Augusto*, if done by a private individual, would amount to piracy; but it seems that that vessel was under the command of an officer of the Venezuelan army, and therefore we presume that if there has been anything irregular it must form the subject of representations to the Government of the Republic. There seems to be several British subjects who have been carried away from British territory by armed forces of the Republic, and whose whereabouts have not been accounted for as yet. Any further evidence that can will be obtained and submitted in due course.

NATHL. NATHAN,  
*Attorney-General.*

JAMES B. SAUNDERS,  
*Harbormaster.*

JANUARY 29, 1901.



[Inclosure 8—Memo.]

*Statement of Venezuelan consul.*

The Venezuelan consul, M. J. Arraiz, accompanied us, interpreted by M. Ybarra, the chief of the Venezuelan navy, now seeing after the repairs to the Venezuelan ships here, called to-day and reported as follows:

Several boats were coming from Venezuela, perhaps La Guira, having on board many revolutionists leaving Venezuela. They were chased by the Venezuelan gunboat *Augusto*. The revolutionists forced the boats to put into Goose Island (Patos), where they landed. The *Augusto* could not follow them, because Patos was English territory; but after the revolutionists had landed, the boats voluntarily approached the *Augusto* and reported the matter, explaining that they were forced by superior numbers to land at Patos. The boats then went away. The people were left on Patos. The *Augusto* did not go near them. The consul reports this because the people are still on Patos.

He also asks if the police can not prevent Patos being made the point of departure of the revolutionists.

C. C. K.

JANUARY 25, 1901.

[Inclosure 9.]

*Memorandum by the colonial secretary.*

I have just seen the Venezuelan consul, Mr. J. Arraiz, who was accompanied by a young naval officer in uniform as interpreter.

I explained to him the information received by this Government concerning the landing of soldiers, etc., at Patos on the 22d January, and said that a report of the occurrence would be sent to the British Government.

He was much taken aback, and said that the soldiers never landed. Then he said that he had a document signed by those who left in the *Augusto* stating what had taken place; lastly, he said that the nationality of Patos was a disputed point. This I at once refuted, saying that Patos was in the possession of the English before Venezuela was a nation.

I don't think he seriously meant to dispute the nationality of Patos, and said no more on that point. (See report of our interview of the 25th January, p. 37 of this inclosure, when he admitted that Patos is British territory.)

He then said he was very sorry that there should be any dispute between the two Governments, as the Venezuelan Government wished to be on good terms with the Trinidad Government, and General Castro desired to encourage commerce, and was thinking of removing the 30 per cent additional duty. He asked what I wanted him to do.

I said that I did not want him to do anything. I told him what this Government is doing in order that we may remain friends, and that the matter now will be settled by the Government in England, and that even if there is a difference of this kind between the two Governments, that is no reason why we should not remain friends.

He then took his leave in a most friendly manner.

C. C. KNOLLYS.

FEBRUARY 27, 1901.

[Inclosure 10.]

*Memorandum from attorney-general.*

HONORABLE COLONIAL SECRETARY: Forwarded in connection with previous papers. Of the 11 people kidnapped by the *Augusto* 3 are now accounted for. On referring to the evidence taken verbally you will find that of the remaining 8, at least 2, Maxwell and Graham, are British subjects. There may be others. What has become of those people is not at present known or whether there is any likelihood of their being seen in Trinidad again.

NATHL. NATHAN.

FEBRUARY 8, 1901.

[Inclosure 11.]

*Statement of Greigo Martínez.*

I, Greigo Martínez, native of Rio Grande, Venezuela, make oath and declare as follows:

I was a passenger on the boat of one Felix Aceituno, and left Rio Grande for Port of Spain on the 17th January last. We reached Patos on the following day (18th) and landed there to await the tide. Early on Tuesday morning we saw the Venezuelan guarda costa *Agusto* lying off the island, and the men on board called to us to go on board that vessel, but we refused, saying we were on English land. The *Augusto* then sent a boat ashore with soldiers, who took some of us prisoners and carried us on board with our luggage. They also seized all the boats and their cargoes. Eleven of us were taken on board the *Augusto*. The rest of the party ran away and hid in the bush and were not taken prisoners. The *Augusto* landed Madame Elvy Jones (a native of Trinidad), a boy called Adolphus Peter, and myself at Yacua in Venezuela. I do not know where the other people who were made prisoners have been carried to. The men on board the *Augusto* took \$25 from my basket, but returned my clothing and other effects. I returned to Port of Spain from Yacua by the boat *Salvador* on Saturday last, the 2d instant.

GREIGO (her x mark) MARTÍNEZ.

Witness:

Q. H. SPICER.

Interpreted and explained to the within-named Greigo Martínez, in patois, by me, and she appeared to understand the same.

APOLON MATBIEN.

Sworn to at the harbor master's office in the town of Port of Spain this 7th day of February, 1901.

Before me:

JAMES B. SAUNDERS.

*Harbor Master and J. P.*HARBOR MASTER'S OFFICE, *February 7, 1901.*

[Telegram.]

*The Marquess of Lansdowne to Mr. Grant Duff.*

No. 2.]

FOREIGN OFFICE, March 21, 1901.

The colonial office has communicated a report relative to the seizure of British subjects on the island of Patos.

Please report whether you have brought the matter to the notice of the Venezuelan Government, and state the result of your representations.

*Mr. Grant Duff to the Marquess of Lansdowne—(Received March 22).*

[Telegram.]

No. 3.]

CARACAS, March 22, 1901.

I recently mentioned the occurrence of Patos Island, referred to in your telegram of the 21st instant, to the Venezuelan minister for foreign affairs.

Señor Blanco informed me that a report relative to the searching of a certain boat off Patos had been furnished by the Venezuelan consul at Port of Spain, but that no information as to the alleged seizure of British subjects had reached him.

I have now requested that the proceedings of the commander of the *Augusto* may be made the subject of a stringent investigation by the Venezuelan Government.

*The Marquess of Lansdowne to Mr. Grant Duff.*

[Telegram.]

No. 4.]

FOREIGN OFFICE, March 23, 1901.

Inform me by telegraph of the result of the representations reported in your telegram of the 22d instant.

Communicate to Venezuelan Government the facts as reported to the governor of Trinidad if you have not already done so.

*Mr. Grant Duff to the Marquess of Lansdowne—(Received March 27).*

[Telegram.]

No. 5.]

CARACAS, March 26, 1901.

With reference to your lordship's telegram of the 23d March, the Venezuelan consul in Trinidad will be instructed by the minister for foreign affairs to send a further report on the incident on Patos

Island, and minister of war will be requested to obtain an account of the proceedings of *Augusto* from her commander.

The minister of the interior will also be asked to obtain information as to the persons who are reported to have been seized on the occasion.

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*Mr. Grant Duff to the Marquess of Lansdowne—(Received April 11).*

No. 6.]

CARACAS, March 22, 1901.

MY LORD: I have the honor to state that I have received information respecting the ill treatment of a British subject at the hands of the soldiers of the Venezuelan army.

The facts are as follows:

James Nathan Kelly, a British subject and native of Trinidad, has been settled for some years at Rio Grande, in the vicinity of Guiria, where he was the possessor of an estate on which he cultivated coffee and cocoa. He has never interfered in politics, and is regarded by the local Venezuelan authorities as a quiet and law-abiding person.

In the month of January last Rio Grande was occupied by troops of the Venezuelan Government. An officer proceeded to Mr. Kelly's house, arrested him, and brought him before a court-martial. His house was pillaged, and a considerable amount of property was stolen.

Mrs. Kelly took refuge in the forest, and eventually escaped to Port of Spain by way of Guiria.

Since the first outrage Mr. Kelly's estate has been subjected to further depredations.

I saw no reason to doubt the truth of Mr. Kelly's story as communicated to me. It does not differ from many cases of a similar kind. It is, however, the first outrage committed against a British subject that has occurred in connection with the late disturbances in the Eastern States of this Republic.

I lost no time in bringing the matter to the notice of the Venezuelan Government at a recent interview with the minister for foreign affairs, who promised that inquiries should be immediately set on foot. I subsequently addressed to his excellency a note, of which I have the honor to transmit a copy.

I have, etc.,

A. C. GRANT DUFF.

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[Inclosure.]

*Mr. Grant Duff to Señor Blanco.*

CARACAS, March 12, 1901.

MR. MINISTER: I have the honor to bring to your excellency's notice a case of outrage on a British subject which, I regret to say, is stated to have been

perpetrated by troops of the Venezuelan Government during the late insurrection in the eastern part of this country. The facts, as related to me, are as follows:

A British subject, James Nathan Kelly, a native of the island of Trinidad, aged 40, has been settled in the United States of Venezuela for the last fifteen years. His residence is Rio Grande, where he has purchased an estate on which he carries on the cultivation of coffee and cocoa to a considerable extent.

Mr. Kelly has never intervened in politics, and I am informed that the officials in the neighborhood of Rio Grande can vouch for his peaceable and law-abiding disposition.

In the month of January last Rio Grande was occupied by troops of the Venezuelan Government. An officer arrested Mr. Kelly, who was sitting at his own door, and dragged him before a court-martial. In the meanwhile his house was broken open and pillaged. Goods to the value of \$300, furniture worth \$300, cocoa of the value of \$1,040, \$1,500, in cash, and a cutter valued at \$500 were taken away by the soldiers. Mr. Kelly's wife took refuge in the woods near Rio Grande, and making her way to Guirila, eventually reached Port of Spain in great distress.

Since the first pillage, above recounted, Mr. Kelly's house and land have been subjected to further depredations on the part of soldiers of the Government.

I will not dwell on the prejudicial effect on the interests of Venezuela herself caused by occurrences of this nature, as I feel sure that your excellency will agree with me in thinking that the injury done—not by insurgents, but by soldiers of the Government—to an inoffensive and law-abiding immigrant, who for many years past has been using his best endeavors to increase the wealth and prosperity of this Republic, calls for immediate inquiry and redress.

I avail, etc.,

A. C. GRANT DUFF.

*Mr. Grant Duff to the Marquess of Lansdowne. (Received April 11.)*

No. 7.]

CARACAS, March 23, 1901.

MY LORD: With reference to your lordship's telegram of the 21st instant, I have the honor to inform you that having recently received a dispatch from the governor of Trinidad suggesting that inquiries should be made in this capital respecting the seizure of certain persons believed to be British subjects on the island of Patos by a Venezuelan officer belonging to the gunboat *Augusto* on the 22d January last, I asked the Venezuelan minister at his excellency's weekly reception on the 19th instant whether any report on this occurrence had been received from the Venezuelan consul in Trinidad.

I had previously received a dispatch from Sir Alfred Moloney respecting the proceedings of the *Augusto* on the date named, but I did not at once bring the matter to the notice of the Venezuelan Government, as further evidence with regard to the proceedings of that vessel was being collected with a view to laying a report of the incident before His Majesty's Government.

Doctor Blanco stated that the Venezuelan consul at Port of Spain had reported that certain boats had been searched off Patos by the Venezuelan gunboat *Augusto* in the month of January, but that no mention had been made of the detention of any British subjects.

Subsequently, on receipt of your lordship's telegram, I addressed a note to the Venezuelan Government, copy of which I have the honor to inclose, giving the names of the persons stated to have been carried off, and suggesting the advisability of instituting a stringent inquiry into the proceedings of the commander of the *Augusto*.

I had the honor of reporting the substance of Doctor Blanco's reply to me on this subject by telegraph on the 22d instant.

On the receipt of your lordship's telegram of the 23d instant I addressed a further note, of which I have the honor to transmit copy, to the Venezuelan Government giving certain additional particulars respecting the occurrences at Patos in the month of January last, and expressing the hope that I might be speedily furnished with the results of the suggested inquiry into the proceedings of the *Augusto*.

I have, etc.,

A. C. GRANT DUFF.

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[Inclosure 1.]

*Mr. Grant Duff to Señor Blanco.*

CARACAS, *March 21, 1901.*

M. LE MINISTRE: On Tuesday, the 19th instant, I had the honor of addressing your excellency verbally on the subject of an incident which took place at the island of Patos in the month of January last.

I understood from your excellency that no report had been received from the Venezuelan consul in Trinidad respecting the seizure and detention of certain persons by Venezuelan soldiers on that occasion, but, according to information laid before the governor of Trinidad, the commander of the Venezuelan gunboat *Augusto*, on the 22d of the month in question, captured and carried off several individuals who had landed on Patos from boats which were proceeding from Venezuela to Port of Spain.

There is good reason for supposing that there were British subjects amongst the prisoners, and the names of those who doubtless belong to that category are as follows: Mrs. Jones, Dolphus, Domingue, Montout, Graham, Manto, George.

Of these, Mrs. Jones was subsequently landed at Yacua, in Venezuela, whence she returned to Port of Spain; George was landed at Mapire; and a man named John, believed to be either Manto or Graham, who landed at Guiria.

The detention of these persons having now been brought to the notice of His Majesty's Government, I have the honor to suggest to your excellency the advisability of causing a stringent inquiry to be instituted into the proceedings of the commander of the *Augusto*, who, according to the sworn testimony of witnesses on Patos at the time, would appear to have been guilty of acts of a grave nature.

I avail, etc.,

A. C. GRANT DUFF.



[Inclosure 2.]

*Mr. Grant Duff to Señor Blanco.*

CARACAS, March 23, 1901.

M. le MINISTRE: In continuation of my note of the day before yesterday respecting the reported seizure of certain British subjects by the Venezuelan gunboat *Augusto*, on the 22d January last, there are certain additional facts in connection with this incident which I have the honor to bring to your excellency's notice.

Besides the prisoners carried off by the *Augusto* a number of persons were left in Patos who afterwards gave evidence at Port of Spain. Some of these were Venezuelan citizens and others British subjects.

It appears that there were four boats—three belonging to the Venezuelans and one to a British subject—waiting at Patos on the 21st January last for the tide on their way to Port of Spain, three of the boats having cargoes of cocoa. The number of persons carried by the boats both as sailors and as passengers was about 25. There is no reason to believe that any of them were connected with the insurrection which was then in progress in the eastern part of the Republic. The boats were of the class which carry on the usual traffic between Port of Spain and the neighboring ports of Venezuela. As they were proceeding to Trinidad, there were no grounds for thinking that they were engaged in smuggling operations.

At that time the Venezuelan gunboat *Augusto* was off Patos, and on the afternoon of the 22d January, last, Col. Enrique Torres, of that vessel, summoned the persons who had landed on the island to come on board the gunboat. On their refusing to do so, Colonel Torres, in the evening, sent two boats carrying 20 soldiers, who removed the boats and seized the cargo. Part of the persons whose property was thus taken fled into the interior of the island, while the remainder were compelled to go on board the *Augusto*. Your excellency is already in possession of the names of the British subjects thus detained.

Of the persons carried off, one, Mrs. Elvelina Jones, a British subject, who escaped from the *Augusto* at Yacua, states in her evidence that the individuals carried away as prisoners on board that vessel were forced to sign a paper which was described by her as a statement that they had come on board voluntarily, but any such statement would appear to be quite at variance with circumstances of their capture.

I have the honor to express the hope that your excellency may be shortly in a position to furnish me with the results of the inquiry into the proceedings of Commander Velutini, of the gunboat *Augusto*, in order that I may be able to lay them before His Majesty's Government without delay.

I avail, etc.,

A. C. GRANT DUFF.

*Mr. Grant Duff to the Marquess of Lansdowne—(Received April 25).*

[Extract.]

No. 8.]

CARACAS, March 29, 1901.

With reference to my telegram of the 26th instant, I have the honor to transmit herewith translation of a note which I received from the Venezuelan Government, informing me of the steps they propose to take with a view to investigating the occurrences on the island of Patos on the 22d January last.

As on previous occasions, when there has been trouble in connection with the island in question, the Venezuelan Government have seen fit to incidentally raise the question of the sovereignty over Patos.

So far I have refrained from making any representation respecting the violation of British territorial waters by the Venezuelan gunboat *Augusto*, and have confined my complaints to the seizure and deportation of certain British subjects by order of the commander of that vessel.

I have the honor to inclose copy of a note in which I have informed the Venezuelan Government that no new considerations have been adduced to show cause why the island of Patos should not be considered a dependency of Trinidad, and consequently a portion of His Majesty's dominions, the waters surrounding it being thus British territorial waters.

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[Inclosure 1—Translation.]

*Señor Blanco to Mr. Grant Duff.*

CARACAS, March 27, 1901.

SIR: With reference to your two notes of the 21st and 23d instant, I have the honor to inform you that this ministry has been obliged to have recourse to the departments of the interior, of finance, and of war and marine in order to institute the requisite investigation into the facts therein related by you and on which the subjects named in the first of the said notes found their complaint.

As Venezuela holds that the island of Patos lawfully belongs to her, the Government will have to consider the incident as it is affected by that circumstance.

Until I can throw light on the matter and see if the act in question is really censurable or has resulted from the natural and very justifiable watchfulness against clandestine trade, I restrict myself to acknowledging the receipt of the two notes of your honorable legation.

Accept, etc.,

EDUARDO BLANCO.

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[Inclosure 2.]

*Mr. Grant Duff to Señor Blanco.*

CARACAS, March 29, 1901.

M. le MINISTRE: I have the honor to acknowledge the receipt of your excellency's note of the 27th instant, in which you are so good as to inform me of the steps which your excellency proposes to take for the purpose of investigating the facts which I had the honor of bringing to your excellency's notice in connection with the seizure of certain British subjects on the island of Patos by the Venezuelan gunboat *Augusto*, in the month of January last.

There is a passage in your excellency's note which would appear to give expression to a view respecting the sovereignty over Patos with which I regret to say I am unable to agree.

The passage alluded to is, in translation, as follows:

"As Venezuela holds that the island of Patos lawfully belongs to her the Government will have to consider the incident as it is affected by that circumstance."

On this I have the honor to observe that no new considerations have, as far as I am aware, been adduced to show cause why the island of Patos should not be considered a dependency of Trinidad, and consequently a portion of His Majesty's dominions, the waters surrounding it being thus British territorial waters.

I avail, etc.,

A. C. GRANT DUFF.

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*Foreign office to colonial office.*

No. 9.]

FOREIGN OFFICE, *May 1, 1901.*

SIR: I am directed by the Marquis of Lansdowne to transmit herewith, to be laid before Mr. Secretary Chamberlain, copy of a dispatch from His Majesty's chargé d'affaires at Caracas,<sup>a</sup> inclosing copies of correspondence with the Venezuelan Government as to the steps taken for the purposes of investigating the occurrence on Patos Island in the month of January last.

I am, etc.,

F. H. VILLIERS.

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*Mr. Grant Duff to the Marquess of Lansdowne—(Received May 9).*

No. 10.]

CARACAS, *April 17, 1901.*

MY LORD: With reference to my dispatch of the 29th ultimo, I have the honor to transmit copy of the declaration of Mrs. F. Jones, one of the persons carried off from Patos by the Venezuelan gunboat *Augusto* on the 22d January last.

This declaration was forwarded to me by the governor of Trinidad in a dispatch dated the 29th ultimo.

As the declaration of Mrs. Jones showed that she and other British subjects had been compelled, by threats of death, to go on board the *Augusto*, and had then been detained on that vessel, being at the same time deprived of their property, I transmitted a copy to the Venezuelan Government in the note of which I have the honor to inclose a copy.

Of the declarations of persons who were at Patos on the 22d January last, most relate more especially to the violation of British territory and waters by the *Augusto*.

That of Gregoria Martinez, however, of which I have the honor to inclose a copy,<sup>b</sup> supports Mrs. Jones's statements, she having also been one of the persons held as prisoners by the *Augusto*.

I have, etc.,

(Signed)

A. C. GRANT DUFF.

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<sup>a</sup> No. 8.

<sup>b</sup> See inclosure 11 in No. 1.

[Inclosure 1.]

*Declaration of Mrs. Jones.*

TRINIDAD.

I, Elvellina Jones, of No. 2 Rose street, Port of Spain, married woman, and a British subject, born in Trinidad, do solemnly declare that—

On Monday, the 21st January, I left Mapire in a boat belonging to my brother, Edward Browne, of Port of Spain. At about 4 o'clock on Tuesday morning we reached Patos, and we found three other boats there, one of which was captained by Aceituno.

Shortly after we arrived there the Venezuelan guardacosta *Augusto* came and lay off the island. At about 10 a. m. a boat came from the *Augusto*, and told us to go off to them. But we refused to do this, saying we were on British land. The boat went back, and the guardacosta remained there all day, till about 6 o'clock in the evening, when another boat came from her with 20 armed men, under the control of one Henry Torres, who had a sword, and appeared to be in charge of them.

They ordered us all to go aboard the *Augusto* under threats of shooting us; 11 of us went and some ran away. They took the four boats that were at Patos, with their cargoes of cocoa, etc., and all the clothing and personal effects of every one. They searched my basket, and I saw them take \$20 in Spanish silver from it, being all I possessed, which they kept, but gave me back my clothes. They took my brother's and those of the other men, but they did not keep the women's clothing. They kept us all on board till the following day without food and about 11 o'clock in the morning they landed myself, the other woman (Gregoria Martínez), and my cousin, Adolphus Peters, at Yacua. We remained there four days, and returned to Port of Spain in Mr. Solis's boat on Sunday, the 27th January.

I make this declaration conscientiously, believing the same to be true, and according to "The statutory declarations ordinance, 1879," and I am aware that if there is any statement in this declaration which is false in fact, which I know or believe to be false, or do not believe to be true, I am liable to fine and imprisonment.

ELVELINA JONES.

Declared at the harbor master's office, Port of Spain, this 13th day of March, 1901.

Before me:

J. B. SAUNDERS,  
*Harbor master and J. P.*

[Inclosure 2.]

*Mr. Grant Duff to Señor Blanco.*

CARACAS, April 9, 1901.

M. LE MINISTRE: I had the honor, on the 23d ultimo, of furnishing your excellency with particulars respecting the occurrences which took place on the island of Patos on the 22d January last in connection with the seizure of certain British subjects by the Venezuelan gunboat *Augusto*.

I now have the honor to inclose the sworn evidence of Mrs. Elvellina Jones, a British subject, and one of the persons carried off by the vessel in question.

This affidavit shows that the witness was compelled to enter the *Augusto* by threats of death; that she was deprived of a sum of money by the crew of the gunboat, and that she was detained on board until the following day, when she was landed on Venezuelan territory.

I have the honor to express the hope that your excellency may shortly be in a position to furnish me with the results of the inquiry into the action of the commander of the *Augusto*.

I avail, etc.,

A. C. GRANT DUFF.

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*Mr. Grant Duff to the Marquess of Lansdowne (received May 9).*

No. 11.]

CARACAS, April 17, 1901.

MY LORD: I have the honor to transmit herewith copy of a dispatch and its inclosures which I have received from the governor of Trinidad relating to the alleged burning of the sloop *Maria Teresa*, the property of a British subject, by a Venezuelan gunboat off Guiria.

The *Maria Teresa* was owned by Mr. D. Wilson, a native of Grenada, the master being Mr. G. Patterson. She sailed under the Venezuelan flag, as she was engaged in the Venezuelan coasting trade.

During the late disturbances on the Gulf of Paria, the vessel appears to have fallen into the hands of disaffected persons at Yrapa and to have been directed by them to proceed to Guiria. The owner obeyed these orders, an officer of the insurrectionary forces being placed on board. Soon after her arrival at Guiria, on the 13th of January last, the *Miranda*, a Venezuelan gunboat entered that port and fired two shots at the *Maria Teresa*, which was about to return to Yrapa.

The *Maria Teresa* was then boarded and the commander of the *Miranda* ordered her to proceed to Trinidad. The master of the *Maria Teresa* prepared to comply with these directions and left Guiria, when the *Miranda* again fired two shots at her. She hove to and a boat came off from the gunboat and compelled Mr. Patterson and the remaining members of the crew to leave her. On reaching the *Miranda* they were told that the sloop would be burned and they themselves imprisoned. The *Maria Teresa* was then plundered and set on fire. Shortly afterwards the *Miranda* left Guiria, and when she was near Point Pima, Mr. Patterson and the two sailors of the *Maria Teresa* were set adrift in an open boat with a piece of an oar.

During the burning of his ship, Mr. D. Wilson, her owner, appears to have been on shore at Guiria, as a prisoner of the insurrectionary authorities.

Mr. Patterson reached a place called Guiniama on the day after that on which he was set adrift, and proceeded to Yrapa, where he was arrested and sent back to Guiria in close confinement. He was there put on board the Venezuelan ship *Augusto* and set free at Rio Grande.

I have the honor to inclose copy of a note, in which I have brought these incidents to the notice of the Venezuelan Government. In it I have observed that there are many points in the case, as reported, that require elucidation, as no resistance was offered by the crew of the *María Teresa*, and no attempt at escape seems to have been made by them. What were the reasons which induced the commander of the *Miranda* to board the sloop a second time and then plunder and burn her?

Whatever may have been the circumstances which justified the Venezuelan naval authorities in detaining Mr. Wilson's vessel, they would appear to have acted with excessive and unnecessary violence, and no arguments can possibly be put forward in support of the treatment to which Mr. Patterson and the sailors were subjected when they were set adrift in an open boat.

I have accordingly urged the Venezuelan Government to cause an inquiry to be instituted into the proceedings of the *Miranda*, and to furnish me with the results of such investigations as soon as possible.

The Venezuelan Government have been supplied with copies of Messrs. Wilson's and Patterson's declarations, and with copies of the translation of the proceedings taken by the former in the court of the district of Marino at Guiria.

I have, etc.,

A. C. GRANT DUFF.

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[Inclosure 1.]

*Governor Sir A. Moloney to Mr. Grant Duff.*

GOVERNMENT HOUSE, TRINIDAD, *March 28, 1901.*

SIR: I have the honor to transmit herewith, for your information, copies of a petition and other documents relating to the reported burning of the sloop *Maria Teresa* by a Venezuelan gunboat off Guiria on the 12th January last.

Copies of these documents have been forwarded to the secretary of state for the colonies.

I have, etc.,

ALFRED MOLONEY.

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[Inclosure 2.]

*Petition of David Wilson.*

*To His Excellency Sir Alfred Moloney, K. C. M. G., governor and commander in chief in and over the colony of Trinidad and Tobago, vice-admiral thereof, etc.:*

The humble petition of David Wilson, a native of the island of Grenada (British West Indies), mariner, respectfully sheweth,

1. That your petitioner was, until very recently, owner of the sloop *Maria Teresa*, which, for business purposes, traded between this port and Venezuela under the Venezuelan flag.



2. That on or about the 13th day of January last your petitioner's said sloop (under the command of one G. Patterson), which had been lying off Yrapa, and had been ordered by the revolutionary authorities to proceed to La Guaira, was anchored off the last-mentioned port.

3. That at about half past 2 p. m. of that day (the 13th) the Venezuelan Government's steamer *Miranda* steamed in the said port of La Guaira and immediately dispatched her boat to the said sloop to inquire the destination of the said sloop, and on being answered "Yrapa" the man in charge of the said sloop was at once ordered to raise anchor and sail to Trinidad, as there was no custom-house in the port.

4. That the order so received was at once complied with, and when the said sloop was sailing off two shots were fired at her and she was ordered to stop, which was done. Then a boat came alongside the said sloop and removed from her the compass and every article of value which she had on board, including a clothes chest which contained the sum of \$177. all which property was conveyed to the said steamer *Miranda*, as well as three sailors, who also were taken to the said steamer and locked up, and then the men in the boat of the *Miranda* returned to the said sloop and threw kerosene oil on the deck and sails and set fire to the sloop, and then the *Miranda* steamed out of the port with the sloop's boat and the three sailors.

5. That at about sunset of the same day they put the three sailors in the sloop's boat at the distance of about 11 miles from the shore and let them go adrift with only one piece of oar and no sails.

6. That your petitioner has been informed that, as he traded and sailed under the Venezuelan flag, he is not entitled to the protection of the British authorities; but your petitioner ventures to address your excellency as a British subject, humbly representing that by the burning of his said sloop, with all her gear and property contained on board of her, your petitioner has lost all that he possessed in this world and has been deprived of the means of earning his livelihood, and consequently of maintaining his family.

Wherefore, as an act of charity, your petitioner humbly prays your excellency to take his case into merciful consideration and to extend unto him some relief and assistance.

And your petitioner as in duty bound will ever pray, etc.

DAVID M. WILSON.

Nos. 4 AND 3, ALMOND WALK, February, 1901.

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[Inclosure 3.]

*The harbor master to the colonial secretary, Trinidad.*

MARCH 4, 1901.

HONORABLE COLONIAL SECRETARY: Having inquired into this matter I have the honor to forward statements of D. M. Wilson, owner, and George Patterson, master, of the sloop *Maria Teresa*, which were taken on oath before me this day.

From the evidence of the owner it will be noted that there is no other member of the crew at present in Trinidad.

J. B. SAUNDERS.

[Inclosure 4.]

*Affidavit of D. M. Wilson.*

My name is D. M. Wilson; I am a native of Grenada, and owner of the *Maria Teresa* (sloop), trading under the Venezuelan flag between Trinidad and Venezuela. I used to trade up and down in the sloop myself. On the 10th of January, at Yrapa, my sloop *Maria Teresa* was taken charge of by the revolutionary forces and I was ordered to take her to Yaguaraparo to carry troops, and after landing them I was ordered back to La Guira with an officer on board. We reached there on the morning of the 13th, and I went ashore with the revolutionary officer, the sloop still being under his control, and I was informed that I would be required to return to Yaguaraparo the same afternoon. About 3 o'clock the *Miranda* came in the harbor and I saw my sloop burnt. I was at that time a prisoner of the revolutionists. I was liberated the same evening and returned to Trinidad by the boat *Macareo* on the 26th February, the first opportunity I had to return.

My clothes and belongings were all on board the *Maria Teresa*, and there was \$177 in my chest. I lost everything.

The master of the *Maria Teresa* is the only member of the crew now in Trinidad. The sloop was registered at La Guira in the name of my sister, Lena Wilson. I traded under the Venezuelan flag, as it is necessary for the purpose of trading on the coast of Venezuela. I did not receive any payment or reward for conveying the revolutionary forces, and my sloop was released at the Venezuelan consulate, harbor, and customs departments in Port of Spain when last leaving on the 8th January.

D. M. WILSON.

Sworn to at the harbor-master's office, in the town and Port of Spain, this 4th day of March, 1901.

Before me,

J. B. SAUNDERS,  
*Harbor Master.*

[Inclosure 5.]

*Affidavit of George Patterson.*

My name is George Patterson. I am a native of Trinidad, residing at 31 Duncan street. Until lately I was master of the sloop *Maria Teresa*, owned by D. M. Wilson, of Trinidad, and trading to Venezuela under the Venezuelan flag.

On the 13th of January I left Guayra bound for Yrapa, and the Venezuelan guardacosta *Miranda* met me and fired two shots over the sloop. I hove to and waited. A boat came from the guardacosta, in which there was an officer, and he demanded where I was going to. I told him Yrapa. He ordered me to proceed to Trinidad as there was no customs at Guayra. After I had started the *Miranda* again fired two more shots at me, one going through my sails. I hove to again and waited for her. The boat came again from the guardacosta and took myself and two sailors (both Trinidadians) on board. I was told by the chief officer, Rosales, that the *Maria Teresa* would be burned, and that the sailors and myself would be imprisoned. They would not allow us to take any clothes or other belongings with us to the *Miranda*. They went again to the *Maria Teresa*, and took everything of any value, including our clothes, chests, etc., the ship's compass, etc. They then threw kerosene oil over the deck and sails and set fire to her and burnt her, and completely destroyed

her. I was made prisoner on board the *Miranda*, but after she had got off Point Pima, about 11 or 12 miles, they put myself and the two sailors in the *Maria Teresa's* boat with a piece of an oar and set us adrift. This was 2 o'clock in the evening. We reached Guinlana at 7 o'clock next morning, and went on to Yrapa. I was made a prisoner there by the officer commanding the Government troops on the 18th ultimo, who started with me for Guiria on Sunday the 20th. I was tied with ropes from the 18th to the 23d, when we reached Guiria. I was put on board the *Augusto* as a prisoner, and remained there till the 30th, when I was sent ashore free at Rio Grande. I walked to Guiria and took passage in the *Josefita* to Trinidad, reaching here on the 5th February.

GEORGE PATTERSON.

Sworn to at the harbor master's office, in the town of Port of Spain, this 4th day of March, 1901.

Before me,

J. B. SAUNDERS,  
*Harbor Master.*

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[Inclosure 6.]

*The harbor master to the colonial secretary, Trinidad.*

MARCH 23, 1901.

HONORABLE COLONIAL SECRETARY: I have the honor to forward a letter from Mr. D. H. Wilson, covering certain documents relating to the burning of his sloop *Maria Teresa* off Guiria on the 12th January last.

In connection with this matter, sworn statements by D. H. Wilson and George Patterson, master of the vessel, were forwarded to you on the 4th instant.

J. B. SAUNDERS.

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[Inclosure 7.]

*Mr. D. Wilson to the harbor master, Trinidad.*

PORT OF SPAIN, March 23, 1901.

SIR: In connection with the burning of the sloop *Maria Teresa* by the Venezuelan gunboat *Miranda*, I beg to forward inclosed documents, together with translation into English.

These statements were made by three respectable gentlemen resident at Guiria, who have known me as a trader in Venezuela for four years.

I have, etc.,

(Signed) D. WILSON.

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[Inclosure 8.—Translation.]

*Proceedings taken before the marine court, Guiria.*

UNITED STATES OF VENEZUELA, *State of Sucre:*

[Seal 5: Its value, 1 bolivar.]

(Signed) VETANCOURT VIGAS.

Richard Willson, British subject, of the city of Port of Spain, of the British Island of Trinidad, and now in this city, and of full age, respectfully lay open before you.

To ends that interest me I appeal to you to summons and make appear before your court the citizens Estában Solís, Guillermo E. Díaz, and Mamerto Sifontes, of this vicinity, to answer previously the formalities of law, inclusive that of swearing to the following questions :

1. If it is true that the Venezuelan gunboat *Miranda* seized, off this port, the sloop *Maria Teresa*, of 14 tons register, which was under my charge.

2. If it is true that the said gunboat *Miranda* destroyed by fire the said sloop *Maria Teresa* in sight of this port on the same day as she was taken in custody.

3. If it is true that the said sloop *Maria Teresa*, in her voyages from Port of Spain to this port, has always complied with the requirements of the law in entering and clearing, by which they know that there was never any case against her for breach of the revenue laws.

After the evidences have been taken, I beg that the originals be returned to me. This is an act of justice I ask at Guiria, on the 11th day of March, 1901.

R. WILSON.

COURT OF THE DISTRICT OF MABINO, GUIRIA,

March 11, 1901.

The present bill has been presented; let the witnesses mentioned above be cited and their evidences taken.

JUAN FRANCO,

*Stipendiary J. P.*

M. PENALOSA,

*Clerk of the Court.*

In the same audience (on the same day) appeared by summons the citizen Estában Solís, who, after having been sworn, said: "I am Estában Solís, of this city, of 36 years of age, married. I am a merchant." It was read to him the respective articles of the civil code, and said: "I have no impediment whatever in giving my evidence."

There and then the first question was read to him, and he answered thus:

"It is quite true, and I know to my own knowledge what is stated in the first question."

To the second question: "I know it because I was an eyewitness; that in front of this port the sloop *Maria Teresa* was set on fire; which, before being burnt, was coming in towed by the steamer *Miranda*."

To the third question: "Being consignee of the said vessel, I declare that never while she was belonging to Mr. Wilson had any case brought against her for breach of the revenue laws, and that she always entered and cleared legally." The questions being finished, the evidence was read to the witness, and he declared the same to be correct, and signed with the justice and clerk of the court.

ESTABAN SOLIS,

JUAN FRANCO,

*Stipendiary Justice.*

M. PENALOSA,

*Clerk of the Court.*

Immediately after appeared by summons the citizen Mamerto Sifontes, and swore to speak the truth according to the Catholic religion, which is the one he professes. He said that his name is Mamerto Sifontes. He is 56 years of age; married, and a merchant, and is belonging to this city. The respective articles of the civil code were read to him, and he said: "I have no impediment to give

evidence." There and then the first question was read to him, and he answered that he knows to his own knowledge everything stated in this question in all its parts.

To the second: "I know it to my own knowledge, because I was an eye-witness to the burning of the sloop *Maria Teresa*, after she was being towed by the steamer *Miranda*."

To the third: "I know there has never been any case brought against the said sloop *Maria Teresa* for any breach of the revenue laws."

His evidence being finished, it was read to him, and he said it was correct, and signed with the justice and clerk of the court.

MAMEITO SIFONTES.  
JUAN FRANCO,  
*Stipendiary Magistrate.*  
M. PENALOSA,  
*Clerk of the Court.*

Immediately after, citizen Guillermo E. Díaz, having been cited, appeared, and, after being sworn, promised to say the truth according to the Catholic religion, which he professes. He said his name is the one above written, of 44 years of age, merchant by trade, and belongs to this city. The respective articles of the civil code were read to him, and he said:

"I have no impediment whatever to give evidence," and then the first question was read to him, and he answered that "it is true in all its parts the question just put to me."

To the second: "It is true, also, that the steamer *Miranda* set on fire the said sloop *Maria Teresa* in sight of this port the same day on which she was taken in custody."

To the third: "It is true this question in all its parts, as never has there been any case against the said sloop for breach of the revenue laws, and she has always arrived at this port properly cleared." His evidence being finished, it was read to him, and he said it was correct, and signed with the justice and clerk of the court.

GILL. ED. DÍAZ.  
JUAN FRANCO,  
*Stipendiary Justice.*  
A. A. PENALOSA,  
*Clerk of the Court.*

COURT OF MARINO DISTRICT, GUIRÍA,  
March 11, 1901.

This evidence having been taken and delivered to the interested party.

JUAN FRANCO,  
*Stipendiary Justice.*  
A. A. PENALOSA,  
*Clerk of the Court.*

NOTE.—It is composed of three folios which we delivered to the interested party, Richard Wilson, in compliance with the preceding demand.

Certified, dated, and signed.

A. A. PENALOSA, *Clerk.*

I certify that the above-written signatures, Juan Franco and A. A. Penalosa, are true and the same they use in all their private and public acts, and are

as they are signed, justice and clerk of the court of this district, 11th March, 1901.

ENRIQUE GARCIA PERMUY,  
*Vice-Consul of His Catholic Majesty.*

VICE-CONSULATE OF SPAIN IN GUIRIA, *March 11, 1901.*

NOTE.—At the request of the interested party, I certify that there is no consul of His Britannic Majesty in this consular district.

PERMUY.

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[Inclosure 9.]

*Mr. Grant Duff to Señor Blanco.*

CARACAS, *April 9, 1901.*

M. le MINISTRE: I have the honor to bring to your excellency's notice certain documents relating to the reported burning of the sloop *Maria Teresa*, a vessel sailing under the Venezuelan flag, but owned by Mr. David Wilson, a British subject.

These papers consist of the sworn evidence of Mr. Wilson and Mr. George Patterson, the master of the *Maria Teresa*, and translation of the proceedings in the court of the district of Marino, Guiria.

It appears that the sloop *Maria Teresa* was taken by the insurrectionary troops at Yrapa on the 10th January last, and ordered to proceed to Yaguaraparo with soldiers, who were landed there. She was then directed to sail to Guiria, having an insurrectionary officer on board. On arriving at Guiria she remained under the control of the officer while Mr. Wilson went on shore, and was told that he would be required to return to Yaguaraparo that afternoon.

Mr. Wilson received no reward or payment for conveying the insurrectionary forces, and there seems no doubt that he acted under compulsion. He was not engaged in illicit traffic, the *Maria Teresa* having been cleared at the Venezuelan consulate at Port of Spain on the 8th January.

While Mr. Wilson was at Guiria the Venezuelan steamship *Miranda* entered that port, and, after compelling the *Maria Teresa* to heave to by firing two shots over her, immediately dispatched her boat to that vessel to inquire the destination of the latter. The master, George Patterson, replied, "Yrapa," and was then ordered to proceed to Trinidad. He complied with these orders and sailed out of the port of Guiria, whereupon the *Miranda* again fired two shots at the *Maria Teresa*, which once more hove to. A boat came from the *Miranda* and took off the master and two sailors.

George Patterson was informed that the *Maria Teresa* would be burnt and that he and the sailors would be imprisoned.

The commander of the *Miranda* then sent some of his crew on board the *Maria Teresa*, who took possession of all the property in the vessel, which was then set on fire and completely destroyed.

George Patterson was detained on the *Miranda* for some time, but when that vessel was off Point Pima, he and the two sailors were set adrift in the boat of the *Maria Teresa* with a piece of an ore.

They reached Guinlana on the following day, 14th January, and then proceeded to Yrapa, where George Patterson was arrested by the commander of the Government troops there on the 18th January. He was then bound with ropes, sent back to Guiria, which he reached on the 23d, and detained on board the *Augusto* till the 30th, when he was set free and put on shore at Rio Grande, whence he walked to Guiria, and obtained a passage from that port to Trinidad.



As the *Maria Teresa* had been seized by disaffected persons and was, undoubtedly, being used for unlawful purposes, against the will of the owner and master, the *Miranda* was perfectly justified in arresting her. There are, nevertheless, many points in the evidence which require elucidation. For what reason did the commander of the *Miranda* cause the *Maria Teresa* to be boarded and a little later suffer her to proceed to Trinidad, shortly afterwards apparently changing his mind and again sending a force to board her? No attempt at escape or resistance seems to have been made by the crew of the *Maria Teresa*, yet that vessel was burnt, the property on board seized, and her sailors arrested and placed in an open boat with a broken oar. The unfortunate man Patterson was put under arrest on reaching Yrapa and detained for several days, but no mention is made of the reasons which induced the military authorities to keep him in close confinement; on the other hand, the owner of the *Maria Teresa* was in custody of the insurrectionary forces.

Whatever may have been the circumstances which justified the commander of the *Miranda* in detaining the *Maria Teresa*, he would appear to have acted with excessive and unnecessary violence, and no arguments can possibly be put forward in support of the treatment to which the sailors of the *Maria Teresa* were subjected when they were set adrift in an open boat.

As the *Maria Teresa* was the property of a British subject, I have the honor to express the hope that your excellency will be so good as to cause a searching inquiry to be instituted into the proceedings of the commander of the *Miranda*, and to beg that I may be furnished, at your excellency's earliest convenience, with the results of this investigation.

I avail, etc.,

A. C. GRANT DUFF.

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*Mr. Grant Duff to the Marquess of Lansdowne—(Received May 9).*

No. 12.]

CARACAS, April 17, 1901.

MY LORD: I have the honor to transmit herewith copies of dispatches received from the governor of Trinidad and of notes which I have addressed to the Venezuelan Government respecting the proceedings of the commander of an unnamed Venezuelan guardacosta on the island of Patos in the month of February last.

On the 26th of that month John Craig, a fisherman of Trinidad and a British subject, left that island on a fishing expedition in his boat the *Sea Horse*. He proceeded to the island of Patos, which he reached at 8 a. m. on the following day, and there he met another boat, the *Buena Fe*, belonging to Simon Revera, a Venezuelan citizen.

At about 8.30 a. m. John Craig, having in the meanwhile landed and beached his boat, there sailed into the bay in which he had gone ashore a small Venezuelan guardacosta. The name of her commander is given as Agapine or Agropelle. This vessel carried a crew of 8 men, and of this number 3, armed with cutlasses and rifles came on shore and began to beat Anthony Andrew and some of the companions of John Craig, who, however, was not struck by them. Simon Revera was one of those assaulted on this occasion. A man whose

name is stated to be Badian, ran away and was fired upon by order of the commander of the guardacosta. He, however, escaped unhurt. The Venezuelan sailors then seized the *Sea Horse* and the *Buena Fe* and the stores which the boats contained, leaving John Craig, Simon Revera, and the other men on the island without food or water.

I have urged the Venezuelan Government to institute an immediate inquiry into the acts alleged to have been committed by the commander of the guarda costa, who, according to the sworn declarations of the complainants, landed an armed force on the territory of a friendly power, assaulted the subjects of that power, as well as certain other persons, and seized their property, while they were peacefully engaged in their lawful avocations.

I have, etc.,

A. C. GRANT DUFF.

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[Inclosure 1.]

*Governor Sir A. Moloney to Mr. Grant Duff.*

GOVERNMENT HOUSE, TRINIDAD, *March 28, 1901.*

SIR: I have the honor to transmit herewith, for your information, copies of a petition and a statement relative to the alleged seizure of a boat belonging to one John Craig by a Venezuelan guarda costa.

Copies of these documents have been forwarded to the secretary of state for the colonies.

I have, etc.,

ALFRED MOLONEY.

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[Inclosure 2.]

*Petition of John Craig.*

*To His Excellency Sir A. Moloney, K. O. M. G., governor and commander in chief of the Colony of Trinidad and Tobago, etc.*

The humble petition of the undersigned, of Port of Spain, most respectfully sheweth:

That your petitioner's grievance is of a serious representation of this day, under which lay before your excellency for investigation.

That your petitioner is a fisherman of this island, and some time of the 27th February last I went to see after my fish pot on British waters, and during which time I have also went ashore on British soil, known as Patos or Goose Island, of the Colony of Trinidad, where your applicant was assaulted by General Agropelle, of Venezuelan water cruiser; who have maliciously ill used your petitioner to the greatest extent by means of using firearms at your petitioner. I was then obliged to lay prostrated to escape from the danger in his cruel attempt. That your petitioner had otherwise severe beating by him, in which he have taken away the boat and clothing.

That your petitioner, in manner most comfortable, state your excellency may minutely observe that the grievance done to your petitioner on the British soil, and as British subject crave your excellency's protection in the matter grievance.

And your petitioner, as in duty bound, will ever pray.

JOHN CRAIG.

11 SOUTH SQUARE, *Port of Spain,*  
*March 6, 1901.*

[Inclosure 3.]

*Declaration of John Craig.*

John Craig, sworn, saith:

I am a native of St. Vincent, but have been residing in Trinidad for the last fifteen years. Five years ago I entered into a contract to plant cocoa in Venezuela for one Pedro Caselle at Aricagua, and during that time visited Trinidad occasionally. Three months ago, however, on account of the revolution, I left my contract and came to Trinidad.

On Tuesday, the 26th ultimo, I left Trinidad on a fishing expedition in my boat called the *Sea Horse*, and at about 8 a. m. on the 27th arrived at Patos, my destination, where I met another boat. About half an hour after, when I had landed and beached my boat, a small Venezuelan guardacosta, captained by one Agapine, sailed into the bay and came right up to the beach. She carried a crew of 8 men all told, and of this number 3, armed with cutlasses and rifles, jumped ashore and began to beat one Anthony Andrew, who was with me, and also some of the other men. They did not, however, beat me. One man, whom I know by name of "Badián," in making his escape was fired upon by order of Agapine, but was not hurt. They then took everything, including our boats, and left us on the island without even food or water.

On Thursday, the 28th, at about 7 p. m., we saw a boat passing and hailed out, and they came and took two of us and brought us to Gasperee, whence I took passage in the gulf steamer for Port of Spain. I paid for my ticket, as I had 3s. in my pocket which had escaped the notice of the Venezuelans, as they did not search us.

The guardacosta was a pirogue (large fishing boat) which had been taken away from M. Ducharme by the government party.

I was told this by one Compeer, who said he recognized the pirogue and knew that it had been seized by the Government.

I estimate my loss at \$80.

Besides myself there were three other men fishing with me—Anthony Andrew, Gerald, and Robert. I do not know their surnames. Two of them are living in Trinidad and can be found by me if required.

JOHN CRAIG.

Sworn to before me, at the harbor master's office, Port of Spain, this 7th day of March, A. D. 1901.

JAMES B. SAUNDERS,  
Harbor Master and J. P.

[Inclosure 4.]

*Governor Sir A. Moloney to Mr. Grant Duff.*

GOVERNMENT HOUSE, TRINIDAD, *March 28, 1901.*

SIR: I have the honor to forward herewith, for your information, copy of a report, with inclosures, by the harbor master on the subject of the alleged seizure of the boat *Buena Fe* by a Venezuelan guardacosta at Patos on the 26th February last.

The secretary of state for the colonies has been furnished with copies of the above-mentioned documents.

I have, etc.,

ALFRED MOLONEY.

[Inclosure 5.]

*The harbor master to the colonial secretary, Trinidad.*

MARCH 4, 1901.

HONORABLE COLONIAL SECRETARY: I have the honor to forward a letter received this morning from one Simon Revera, late master of the boat *Buena Fe*, which he states was seized by a Venezuelan guardacosta on the 26th ultimo at Patos Island; he also complains of ill treatment from the crew of the guardacosta.

Simon Revera, being a Venezuelan (although he informs me he has resided in Trinidad for about three years), and his vessel being under the Venezuelan flag, I have advised him to make his complaint to the Venezuelan consul, but seeing that the seeming outrage happened on British soil, I deem it necessary to report the matter for the information of his excellency the governor.

J. B. SAUNDERS.

[Inclosure 6.]

*Simón Revera to the harbor master, Port of Spain.*

[UNDATED.]

SIR: This is to inform you that I, Simón Revera, master of the boat *Buena Fe*, on Tuesday, the 26th February, 1901, after duly cleared my boat legally for Venezuela, in my way going down I called at Patos, as the tide was against me waiting for the next tide, to my great astonishment I heard the report of gunshots. When I look I see that it was a boat coming to Patos, and the Venezuelan guardacosta, otherwise the Venezuelan customs boat, firing at the boat. The boat arrived to where I was with the Venezuelan boat followed her to the spot, where the Venezuelan captain, one Crispino, began to fire at us on shore, and after they landed and began to illtreat us by giving us planas with their cutlass, and they took away the boats, leaving us there without food nor water. We remain two days punishing like that. Fortunately for us that a boat called there at about 9 o'clock, and the captain was good enough to rescue us.

Trusting that this explanation will satisfy you, as that is all the details I can give and swear to, I remain, etc.,

SIMÓN REVERA.

[Inclosure 7.]

*Declaration of Simón Revera.*

I, Simón Revera, of Carupano, Venezuela, now residing at No. 3 Duncan street, Port of Spain, trader, do solemnly and sincerely declare that—

I am the owner and also captain of the boat *Buena Fe*.

On Tuesday, the 26th February, 1901, I left Trinidad for Yrapa, and on my way to that port stopped at Patos on account of the wind falling.

Whilst there I heard the report of rifles, and went to find out the cause. I saw a small boat coming toward the island pursued and being fired upon by a Venezuelan guardacosta.

The occupants of the boat reached the shore first and landed, the guardacosta still firing upon them. The crews of the two boats—that is to say, the one just

arrived and mine—ran away, but their captain, one Craig, and myself stood our ground, knowing that we were on British territory. Three men, including the captain, one Agapine, landed from the guardacosta, and without telling us anything, commenced to beat us. They then took away our boats and left us on the island without any food or water.

I lost \$55 in cash, my boat, valued at \$75, and other stores, valued at \$5.

Two days after a boat passed and took us to Gasparee, whence we took passage to the Port of Spain in the Gulf steamer.

Whilst on the island we were compelled to live on shrubs.

I make this declaration conscientiously, believing the same to be true, and according to "The statutory declarations ordinance, 1879," and I am aware that if there is any statement in this declaration which is false, in fact, which I know or believe to be false, or do not believe to be true, that I am liable to fine and imprisonment.

SIMÓN (his x mark) REVERA.

Witness:

W. J. KIRCALDIE.

Read over, interpreted, and explained to the within-named Simon Revera in the Spanish language, and he appeared to understand the same.

FRED. GEO. REDHEAD.

Declared at the harbor master's office, Port of Spain, this 8th day of March, 1901.

Before me,

JAMES B. SAUNDERS,  
*Harbor Master and J. P.*

[Inclosure 8.]

*Mr. Grant Duff to Señor Blanco.*

CARACAS, April 9, 1901.

M. le MINISTRE: I have the honor to bring to your excellency's notice the following circumstances, which I venture to think call for careful investigation:

On the 26th February last, John Craig, a fisherman of Trinidad and a British subject, left that island on a fishing expedition in his boat, the *Sea Horse*. He proceeded to the island of Patos, which he reached at 3 a. m. on the following day, and there he met another boat. At about 8.30 a. m., John Craig, having in the interval landed and beached his boat, there sailed into the bay in which he had gone ashore a small Venezuelan guardacosta. The name of her commander is given as Agapine, or Agropelle. This vessel carried a crew of 8 men, and of this number 3, armed with cutlasses and rifles, came on shore and began to beat Anthony Andrew and some of the other companions of John Craig, who, however, was himself not beaten. One man, whose name is stated to be Badian, ran away, and was fired upon by order of the commander of the guardacosta. He, however, escaped unhurt. The Venezuelan sailors then seized the boats and their contents and left John Craig and the other men on the island without food or water.

Happily, on the 28th February, they hailed a boat which was passing, and John Craig was thus enabled to return to Port of Spain.

The above is the substance of John Craig's sworn evidence.

The acts alleged to have been committed by the commander of the guarda costa—the name of which is not given, but which is said to be a pirogue taken by the troops of the Venezuelan Government from M. Ducharme, one of the leaders in the late insurrection on the Gulf of Paria—in landing an armed force on

the territory of a friendly power, and in assaulting the persons and seizing the property of subjects of that power while peacefully engaged in their lawful avocations, would appear to demand the most searching investigation. I have, accordingly, the honor to express the hope that your excellency will be so good as to cause an immediate inquiry to be instituted into the proceedings of the vessel in question.

I avail, etc.,

A. C. GRANT DUFF.

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[Inclosure 9.]

*Mr. Grant Duff to Señor Blanco.*

CARACAS, April 10, 1901.

M. le MINISTRE: In my note of yesterday's date, respecting the case of John Craig, I had the honor to inform your excellency that the complainant stated that on arriving at Patos he met with another boat at that island. The boat in question was called the *Buena Fe* and was owned by Simón Revera, a Venezuelan citizen, but at present a resident of Port of Spain, who on the 8th ultimo gave evidence respecting the incident before the harbor master of Port of Spain.

I have the honor to inclose a copy of this man's affidavit, which shows that an armed force landed on Patos from an unnamed Venezuelan guarda costa; that the members of this force assaulted the witness; that he lost \$55 in cash and his boat and the stores which it contained, and that he was left on the island without food and water.

I avail, etc.,

A. C. GRANT DUFF.

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*Mr. Grant Duff to the Marquess of Lansdowne—(Received May 9.)*

No. 13.]

CARACAS, April 19, 1901.

MY LORD: With reference to my dispatch of the 17th instant I have the honor to transmit to your lordship translation of a note in which the Venezuelan Government inform me that the declaration of Mrs. Elvelina Jones respecting her detention on board the Venezuelan gunboat *Augusto* has been referred to the ministries of the interior, of finance, and of war and marine, in connection with the inquiry which is being held with regard to the proceedings of the commander of the vessel in question.

I have, etc.,

(Signed)

A. C. GRANT DUFF.

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[Inclosure.—Translation.]

*Señor Blanco to Mr. Grant Duff.*

CARACAS, April 17, 1901.

SIR: The matter mentioned in your note of the 9th instant, and treated of in the declaration of Elvelina Jones, of which a copy has



been received, would seem to be included in the facts alleged by the other British subjects in their complaint against the captain of the *Augusto*, and to which you have referred in the two preceding notes which I had the honor to answer under date of the 27th March, as in the account therein contained figures Mrs. Jones, the same, no doubt, who subscribes the declaration now transmitted by you. This department, therefore, thinks it expedient to defer the consideration of this new step until the reports of the departments of the interior, finance, and war and marine on the investigations made by them into the acts attributed to the captain of the *Augusto* have been received.

Accept, etc.,

EDUARDO BLANCO.

*Mr. Grant Duff to the Marquess of Lansdowne—(Received May 9.)*

No. 14.]

CARACAS, April 19, 1901.

MY LORD: With reference to my dispatch of the 17th instant I have the honor to transmit herewith translation of a note in which the Venezuelan Government inform me that the ministries of the interior, of war and marine, and of finance have been requested to inquire into the circumstances under which the *María Teresa* was burnt by the Venezuelan man-of-war *Miranda*.

I have, etc.,

A. C. GRANT DUFF.

[Inclosure.—Translation.]

*Señor Blanco to Mr. Grant Duff.*

CARACAS, April 17, 1901.

SIR: The elaborate account given in your note of the 9th instant and in the three documents thereto annexed of the circumstances which attended the destruction of the sloop *María Teresa* leads to a consideration of the matter from a point of view in which due regard must be paid to the condition of rebellion in which the vessel was at the time and to the fact that she was sailing under the Venezuelan flag. At first sight, therefore, and even after the most careful reflection, the matter seems to offer an aspect which completely removes it from any field of examination other than that which arises from international law in its relations to municipal law, and consequently this department thinks it absolutely necessary to limit itself to sending copies of your note to the departments of the interior, of war and marine, and of finance, in order that each of those ministries may call for and obtain such a report as will enable me to determine whether the action of the *Miranda* was characterized by violence or was imposed by the necessities of the case, and therefore justifiable.

As this method of procedure is substantially the same indicated by you in your courteous note to which I refer, I have great pleasure in informing you thereof, and at the same time I have, etc.,

EDUARDO BLANCO.

*Mr. Grant Duff to the Marquess of Lansdowne—(Received May 9).*

No. 15.]

CARACAS, April 19, 1901.

MY LORD: With reference to my dispatch of the 17th instant I have the honor to transmit herewith to your lordship translation of a note in which the Venezuelan Government inform me that the ministries of finance and of the interior have been requested to investigate the circumstances under which John Craig and Simon Revera were deprived of their boats *Sea Horse* and *Buena Fe* by armed men, who landed on the island of Patos from an unnamed Venezuelan guardacosta in the month of February last.

I have, etc.,

A. C. GRANT DUFF.

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[Inclosure—Translation.]

*Señor Blanco to Mr. Grant Duff.*

CARACAS, April 17, 1901.

SIR: I have the honor to refer to your two communications relating to the complaint of the fisherman John Craig for abuses committed against him by the captain of the Venezuelan guardacosta toward the end of February last. I have already communicated to the departments of finance and the interior the account given by you in the first of the two notes, in order that they should institute inquiries into the nature of the acts.

As the second note, received afterwards, refers to a declaration of Simon Revera, in which the same circumstances alleged by Craig are mentioned, it will also be affected by the inquiries which are being made.

With regard to the opinion expressed by you that the disembarkation of the forces of the guardacosta was effected on the territory of a friendly power (that of the island of Patos), I must again call your attention to the circumstances that Venezuela considers that territory to belong to her on the grounds adduced in the correspondence, of which I gave a summary in my note of the 13th instant.

Until I am in a position to inform you of the results of the investigation ordered to be made into Craig's complaints, I have, etc.,

EDUARDO BLANCO.

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*Mr. Haggard to the Marquess of Lansdowne—(Received July 3).*

No. 16.]

CARACAS, June 13, 1901.

MY LORD: With reference to Mr. Grant Duff's dispatch of the 19th April last I have the honor to inclose herewith a translation of the reply of the Venezuelan Government to Mr. Grant Duff's representation on the subject of the confiscation of a boat belonging to John Craig and the ill treatment of the crew by a Venezuelan officer.

Even from the account of the official himself, there seems to have been a serious act of arbitrary injustice, and I have the honor to

inclose also a copy of my note to the Venezuelan Government, in which I point this out, and request that a further inquiry should be made into his conduct.

I have, etc.,

W. H. D. HAGGARD.

[Inclosure 1.—Translation.]

*Señor Blanco to Mr. Haggard.*

CARACAS, *June 8, 1901.*

M. LE MINISTRE: I have the honor to inclose herewith the certified copy of the information supplied to his excellency the minister of finance by the custom-house at Guiria with reference to the complaint made by Mr. John Craig, sent to this department by Mr. Grant Duff on the 9th and 10th April last.

In the above account your excellency will find related the actual course pursued by the revenue cutter to which the complainant attributed the deeds and actions on which your honorable legation bases its inquiry. From this it will be seen that it was a smuggling operation, luckily stopped by the Venezuelan officer in the fulfillment of his duty.

Accept, etc.,

EDUARDO BLANCO.

[Translation.]

UNITED STATES OF VENEZUELA.

(Customs of Guiria.)

GUIRIA, *May 8, 1901.*

MINISTER OF FINANCE: In fulfillment of the instructions contained in your note of the 13th April last, directory of customs, No. 546, I perform my duty in sending you the particulars which I have collected with reference to the occurrences connected with the British subject John Craig.

Col. Agripino Lairret informs this custom-house that, in coasting along the eastern shores of the jurisdiction of this customs in a boat, by the orders of General Mendes, expeditionary chief of the Government, being on shore at Caraquito, he saw a boat approaching the land. Suspecting that it might be a smuggling vessel, he went out in the boat under his command to follow it until he could give chase not without the smuggling vessel making attempts to fly, seeking Patos; that the boat was manned by two Englishmen, and the master was from Margarita, and that they were coming from Trinidad to get cocoa on the Venezuelan coasts, which was shown by the fact of their having 25 sacks of raw cocoa<sup>a</sup> on board; that the boat had no legal permit; and when he declared to the crew of the smuggling vessel that he was taking them in this direction they demanded to be left on Patos, which was done without their being ill treated either by word or deed.

This information has been given by the above-mentioned Lairret in the office under my charge.

God and federation.

RAFAEL JOSÉ ABTEAGA.

This is a true copy.

The director,

MANUEL FOMBONA PALACIO.

MINISTRY OF FOREIGN AFFAIRS,

DIRECTORY OF FOREIGN PUBLIC LAWS,

*Caracas, June 8, 1901.*

<sup>a</sup> See No. 17.

[Inclosure 2.]

*Mr. Haggard to Señor Blanco.*

CARACAS, June 10, 1901.

**M. le MINISTRE:** I have the honor to acknowledge the receipt of your excellency's note of the 8th instant forwarding the information supplied to his excellency the minister of finance by the custom-house at Guiria with reference to the complaint made by Mr. John Craig of the seizure of his boat and of his own ill treatment by a Venezuelan official on the British island of Patoa.

Your excellency concludes that this report shows that the boat was engaged in smuggling, but I fail to see anything in it which justifies that assumption. It is the bare statement of the man who is himself accused of the outrage, a statement which is entirely unsupported, and which is absolutely contradicted by the sworn statement of Mr. John Craig; but even if it were not so contradicted, in the statement of Colonel Lairet itself, there would not seem to be anything to justify the accusation of smuggling and the consequent confiscation of the boat. It is moreover integrally untrustworthy as it contradicts itself.

Colonel Lairet says that when he was on shore at Caraquito he saw a boat coming "toward the land" and suspected it to be a smuggler; he gave chase and seized it, when the crew said that they were coming from Trinidad to get cocoa from the Venezuelan coast, which was proved by there being 25 sacks of raw cocoa<sup>a</sup> on board.

Here Col. Agripino Lairet's account confirms that of the crew. He says "they were going toward the land"—i. e., the mainland; they say, according to him, that they were going from Trinidad to get cocoa from Venezuela. Surely if they were smuggling cocoa from Venezuela the boat ought to have been going back from the Venezuelan coast, not toward it. This appears to be throughout a suspiciously confused statement.

As to there being no legal permit, I would ask what Venezuelan permit could an English fishing boat at an island which has at least been considered to be English for the last century be expected to be provided with?

Again, Col. Agripino Lairet says that the master, John Craig, was a native of Margarita, i. e., a Venezuelan. John Craig himself swears in his affidavit of the 7th March of this year that he is a native of St. Vincent, resident in Trinidad during the last fifteen years. It is in the capacity of a British subject that he has appealed to the governor of Trinidad, and it is as a British subject that Mr. Grant Duff put this request before your excellency. There can be no difficulty in settling this point; in the meanwhile I would suggest that John Craig is an English and not a Venezuelan name.

Under all these circumstances I would invite your excellency to take steps to cause a further strict inquiry to be made into the conduct of this official in this matter, with the view to his punishment and to the indemnification of John Craig for his injury and loss.

It is clear that the seizure was made on the British island of Patoa, but as that question is being treated separately, I will not enter into it here.

I avail, etc.,

W. H. D. HAGGARD.

P. S.—I see that the collector of customs at Guiria in his report to the minister of finance speaks of the man whom Col. Agripino Lairet calls a "Margaritanian" as the "British subject, John Craig," thus contradicting his subordinate's statement in the very dispatch in which he forwards it.

W. H. D. H.

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<sup>a</sup> See No. 17.

[Extract.]

*Mr. Haggard to the Marquess of Lansdowne—(Received July 18).*

No. 17.]

CARACAS, June 22, 1901.

In my dispatch of the 13th instant I had the honor of inclosing a translation of a note from the Venezuelan Government with reference to the seizure of John Craig's boat on the island of Patos and a copy of my reply to that note.

In that reply I had translated "sacos de crudo nuevo" as "sacks of raw cocoa." I was much puzzled at the expression "de crudo," the more so that it was badly written and I was not quite sure of the word. However, the dictionary gave one of the meanings of "crudo" as "unripe fruit," and Mr. Acting Consul Andral, who has been nearly fifty years in the country and who is a finished Spanish scholar, whom I asked what it meant, stated to me that it was bad Spanish, but that it could only mean sacks of raw cocoa.

When, however, I saw the minister for foreign affairs at his reception on the 18th instant he told me that I had made a mistranslation, as "crudo" was the local technical name of the rough stuff which is used for making sacks.

His excellency added that he had replied to my note, pointing this out in a note which was on its way, and seemed to think that this completely disposed of the whole of my argument that Col. Agripino Lairet stood self-convicted of an unjustifiable act of violence.

I, however, pointed out to his excellency that far from this being the case, the fact that there was no cocoa on board added to the unjustifiable nature of the Venezuelan official's conduct; that according to his own account, even, he had confiscated a boat on totally insufficient grounds, firstly, because it was going in the direction of Venezuela, and, secondly, because it had some sacks on board.

I have waited for four days for the note which his excellency told me was on its way, and as this has not arrived I have embodied that argument in another note, of which I have the honor to inclose a copy.

[Inclosure.]

*Mr. Haggard to Señor Blanco.*

CARACAS, June 21, 1901.

M. LE MINISTRE: In our conversation on the 18th instant, with reference to the seizure on the island of Patos of John Craig's boat by a Venezuelan official, you were good enough to point out to me that my translation of "veinte y cinco sacos de crudo nuevos" by "25 sacks of raw cocoa" was incorrect; that the word "crudo" did not apply to the cocoa, but was a local technical name of the stuff of which the sacks were made.

I much regret this mistake, the more so that the conduct of Col. Agripino Lairet would appear, in view of the correct translation, "25 new sacks of coarse linen or canvas," still more outrageous, according to his own account, than it would have been had it been 25 sacks of cocoa. In the latter case although the boat, according to his account, had not landed in Venezuela the presence of cocoa on board, though of course it might have been produced in Trinidad, might perhaps just possibly have given rise to some suspicion, though even then there was no proof of smuggling. But what can be thought of Col. Agripino Lairet's conduct when, according to his own account, he confiscates violently an English boat without having absolutely any proof or even reasonable suspicion of smuggling, simply because she was going in the direction of Venezuela, and when seized on Patos she had 25 empty sacks on board? It is clear from Col. Agripino Lairet's account that John Craig's boat had not touched Venezuelan land and had not smuggled; he merely suspects that it might be going to smuggle, and as a responsible Venezuelan official considers himself justified in committing the act of violence to which he himself confesses. I say nothing here about his statement being absolutely contradicted by the affidavit of John Craig; his own statement is sufficient to show that, to use no other words, he grossly exceeded his duty.

I therefore confidently hope that the Venezuelan Government will take immediate steps to cause John Craig's boat to be restored to him, and I will leave to your excellency's appreciation the punishment that should be accorded to an official who brings discredit on his government by such an unjustifiable act of violence as Col. Agripino Lairet has himself confessed to.

I may mention that this Agripino Lairet, who is described as enjoying the high rank of "colonel" in the report of the director of customs of Guiría, drops his military rank and appears as a peaceful tradesman ("comerciante") in that of the judge of the "distrito Marino," in another case of alleged violence in which he is implicated against Mr. Kelly, another British subject, and that he is moreover so ignorant as to be described by the judge as unable even to sign his name. I would venture, with the greatest deference, to submit that if ignorant and illiterate men of this description, whose conception of international responsibility must be of the vaguest, are intrusted with important and delicate functions, the exercise of which requires the greatest prudence, regrettable occurrences like that of the seizure of John Craig's boat under the circumstances which are shown by Mr. or Col. Agripino Lairet's own avowal to have been quite unjustifiable, might almost be expected.

I avail, etc.,

W. H. D. HAGGARD.

*Mr. Haggard to the Marquess of Lansdowne—(Received August 16).*

No. 18.]

CARACAS, July 24, 1901.

MY LORD: I have the honor to transmit further correspondence respecting the burning of the *Maria Teresa* by a Venezuelan gunboat.

I have etc.,

W. H. D. HAGGARD.

[Inclosure 1.]

*Mr. Haggard to Governor Sir A. Moloney.*

CARACAS, June 10, 1901.

SIR: On the receipt of your excellency's dispatch of the 28th March, with reference to the burning of the sloop *Maria Teresa* by a Venezuelan gunboat off



Guiría, the property of a British subject, but flying the Venezuelan flag, His Majesty's chargé d'affaires addressed a note to the Venezuelan Government, in which the incidents reported in your excellency's dispatch were brought to their notice. They were, at the same time, urged to cause an inquiry to be instituted into the proceedings of the *Miranda*, the ship which burnt the *Maria Teresa*, and to furnish His Majesty's legation with the result of that investigation. Those results are shown in the two notes from the Venezuelan Government, with their inclosures, of which I have the honor to forward copies.

I have, etc.,

W. H. D. HAGGARD.

[Inclosure 2.—Translation.]

*Señor Blanco to Mr. Haggard.*

CARACAS, May 25, 1901.

SIR: In the reply which this department sent to the Hon. Grant Duff's note of the 9th April, referring to the capture and destruction of the sloop *Maria Teresa* in Venezuelan waters in the beginning of January last, I informed him that it had been decided to send to the offices for interior affairs, finance, war, and marine a copy of the report forwarded by the legation, so that each department might make the necessary inquiry from which it would be possible to determine whether there was question of some act of violence or some justifiable measure. The first outcome of this step was the evidence given by the commander of the ship of war which captured the sloop and whose duty it was to be better acquainted with the circumstances of the case than anyone else. From the information obtained from this officer, now retired from the service by the department for war and marine, a certified copy of which I inclose, your excellency will perceive the conditions of the vessel destroyed, the operations in which it was engaged, and the treatment meted out to her crew by the Venezuelan commander, notwithstanding their flagrant culpability.

I shall have much pleasure in forwarding any further information relating to her master to your excellency, and, in the meanwhile, I have the honor to inclose to you the protests, etc.

EDUARDO BLANCO.

[Translation.]

CARACAS, May 22, 1901.

*Citizen-General and Minister for War and Marine:*

I have the honor to acknowledge the receipt of your note, in which you ask me for detailed information concerning events which occurred between the men of the national gunboat *Miranda* when I was in command of the said gunboat. In accordance therewith I append the following details:

On the 20th of December last I received orders through the citizen administrator of the customs of La Guayra from the citizen-general head of the Executive to place the *Miranda* at the service of Gen. Santiago Briscena, then provincial president of the State of Sucre. I weighed anchor, therefore, and on our arrival at Cumana I communicated my orders to General Briscena.

Within a day or two after I received a note from the general secretary of the state, in which I was told that by General Briscena's orders I should place my services at the disposal of Gen. Vicente Rosales, who had the necessary instructions; that the latter would embark at once, which he did, accompanied by 20 armed men. Thenceforward we began to cruise along the whole length of the coast of Paria and in the gulf of that name. Then broke out the

chimerical revolutionary attempt, directed by Pedro Julián Acosta, and the *Miranda* continued operations in the aforesaid State.

About the 11th or 12th January last we were cruising opposite the harbor of Guiría, then in the power of the rebel forces, and, having drawn near to the shore, we noticed a sloop putting out to sea with great haste. By General Rosales's orders we started in pursuit of her; but the sloop not obeying the signal to stop, it was necessary to fire one or two blank shots to make her lie to, as she afterwards did. She turned out to be the *María Teresa*. The only two men on board of her informed us that they had put into Guiría by order of the rebel chief; that he was then at Yrapa, and that they, on seeing the steamer, endeavored to flee. General Rosales then ordered them to sail to Trinidad, setting them at liberty. We were already leaving the spot when we saw that the *María Teresa*, instead of sailing for Trinidad, was making for the land as fast as she could, with her bow pointed to Yrapa. This being exactly opposed to the orders she had received, and exceedingly suspicious at such a time, we therefore again gave her chase and captured her. Not being able to tow her into any port because by so doing we should be abandoning the cruise, General Rosales resolved to destroy the sloop as being one of the vessels used by the revolutionists. The boat was in ballast, and nothing whatever of her contents was touched. The two men who comprised her crew were transferred to the *Miranda* without ill-treatment of any kind whatever. After having destroyed the sloop, General Rosales ordered them to be taken in his own boat and left in the neighborhood of Yrapa within about 2 miles from the village.

No document was found on board the *María Teresa* which might prove the ownership of the vessel. The statement of the men and their double attempt at flight proved their complicity with the rebellion. It is by no means true that they were abandoned to the waves in a wretched boat with a piece of oar. The boat was in good condition and furnished with the necessary implements for safely reaching the village, which being in a state of revolt, we could not approach any nearer.

These statements can be confirmed by citizens Roman Delgado Chalbend, second in command of the *Miranda*, Lucas F. López, chief gunner, and Antonio Mijeres Palón and Carlos Cosimi, officers of the said ship.

I have the honor thus to reply to your note and subscribe myself, yours, etc.,  
LEOPOLDO PELLISER.

This is a true copy:

Board of Marine Statistics and Accounts,

M. V. CASTRO ZAVALA.

MINISTRY FOR WAR AND MARINE,

Caracas, May 23, 1901.

This is a copy:

The Director,

MANUEL FOMBONA PALACIO.

BOARD OF INTERNATIONAL LAW,

Caracas, May 24, 1901.

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[Inclosure 3.—Translation.]

Señor Blanco to Mr. Haggard.

Caracas, June 8, 1901.

SIR: I have the honor to forward to your excellency further information respecting the circumstances affecting the capture and destruction of the sloop *María Teresa*.

What I sent your honorable legation on the 25th May was obtained from the captain of the ship of war which captured the sloop; what I now herewith inclose, a certified copy of, emanates from the customs of Guiria.

Your excellency will thereby be enabled further to ascertain the nature of the deed and appreciate the clear proofs of the guilt of the sloop and her crew, as well as other details, the knowledge of which is necessary in order to fix the blame in the right quarter.

I have, etc.,

EDUARDO BLANCO.

[Translation.]

UNITED STATES OF VENEZUELA,

CUSTOMS OF GUIRIA,

*Guiria, May 6, 1901.*

CITIZEN MINISTER FOR FINANCE: This administration has received the note of your ministry of the 22d ultimo, in which is inclosed that of the 17th of the same month, which the ministry for foreign affairs addressed to your office on the circumstances relating to the sloop *María Teresa*, and, in accordance with the aforesaid dispatch, I have the honor to lay before you the following information which I have obtained in connection with the circumstances mentioned in the previously inclosed dispatch.

The sloop *María Teresa* passed through this port on the 31st December last on her way from Yrapa with a cargo of fruit for Trinidad, having on board no sailing papers whatever, and returned to this port laden with contraband goods. The individual who acted as captain having, it appears, placed himself at the service of the rebels in Trinidad, whence he brought firearms and ammunition for the rebel forces which were to be found here under the command of Pedro Ducharme. From this place he sailed for Yrapa. It can not be said that the captain was pressed into the service of the revolutionists, inasmuch as he had enlisted in the service while in Trinidad. At any rate, he had brought firearms, and if he did not claim any remuneration, it was because the rebels had authorized him to bring contraband goods.

The shots fired by the *Miranda* were prompted by the fact that the rebel forces on land had opened fire on her, and by the desire to capture the *María Teresa*, no doubt, because she was known to be engaged in clandestine trade and to be the bearer of implements of war, thus directly opposing the Government. Further, if her captain were not in league with the revolution, he would not have traded during that period between this port and Trinidad, and thus would have followed the example of many masters and captains of vessels who preferred to remain at Trinidad until the Government had resumed control of the district.

Mr. George Patterson was arrested for his open hostility to the Government, for it is a matter of public knowledge that not only he but many other British subjects were seen bearing arms in the service of the rebels; and it is also certain that many others accompanied Pedro Ducharme from Trinidad on his way to attack this place.

Mr. Wilson was not in the custody of the rebels because, as has been said, he was acting in concert with and in the service of the revolution. Respecting his ownership of the *María Teresa*, he sent to this office an authorized copy of the ship's warrant, whereby it was seen that it belonged to Lena Wilson.

Having thus given the information required by your dispatch, I am, God and Federation.

RAPHAEL JOSÉ ORTEAGA.

This is a copy :  
The Director.

MANUEL FOMBONA PALACIO.

MINISTRY FOR FOREIGN AFFAIRS,  
BOARD OF INTERNATIONAL LAW,  
Caracas, June 8, 1901.

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*The Marquess of Lansdowne to Mr. Haggard.*

No. 19.]

FOREIGN OFFICE, August 20, 1901.

SIR: I communicated to the colonial office the reports received relative to the burning of the sloop *María Teresa* by the Venezuelan man-of-war *Miranda*.

In view of the discrepancies between the version of the incident given by the Venezuelan Government and that sent home by Mr. Grant Duff, Mr. Secretary Chamberlain suggests that further evidence should be obtained with a view to clear up the facts connected with the case; and I have to request you to endeavor to procure any such evidence which may be available. The governor of Trinidad has been instructed to inquire as to the statements that the *María Teresa* brought arms and ammunition from Trinidad.

I am, etc.,

LANSDOWNE.

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[Extract.]

*Mr. Haggard to the Marquess of Lansdowne—(Received October 10).*

No. 20.]

CARACAS, September 10, 1901.

In my dispatches of the 13th and 22d June, respectively, I had the honor of forwarding to your lordship my correspondence with the Venezuelan Government in continuation of that of His Majesty's chargé d'affaires with reference to the confiscation of a boat belonging to a British subject named John Craig by officials of the Venezuelan Government on the British island of Patos.

Your lordship will have seen from this correspondence, firstly:

That these officials treated Patos as their own territory, and have been supported by the central Government in so doing.

That the latter offer no redress for an act which, even according to their own account, and if their assumed possession of the island be allowed, was one of unjustifiable violence.

The further note from the Venezuelan Government, which is the minister for foreign affairs' fresh explanation, promised me in our conversation on the 18th June, throws no new light on the subject; it merely gives as Agripino Lairé's amplification of his former report that he was in search of military stores which the enemy were supposed to be hiding on the coast, when he caught sight of John Craig's boat. This is put by the minister for foreign affairs as "suspicion of complicity in the revolution." It is again stated that the master was not John Craig, but a Margaritanian, whose name they now give as Simon (alias El Barrigón).

Taking then the Venezuelan account alone, the boat is captured on the island of Patos on suspicion, first of all, of being a smuggler—the only ground for this suspicion being that it had some empty sacks on board—but she is, nevertheless, confiscated.

This accusation is now amended by the further statement that she was suspected of landing arms, but the Venezuelan statement clearly proves that she never touched the coast, and that she therefore could not have landed any arms, while it is not stated that when she was taken after being chased to Patos she had arms in her, and it is not even hinted by the Venezuelan authorities that she had thrown them overboard or hidden them. It may therefore be assumed that she had none, and this disposes of that suspicion.

Then comes the question of her papers. In this further note the Venezuelan Government assert that the crew had no documents "enabling them to prove their innocence."

What documents could they have that could do this?

In former notes it has been alleged that they had no papers, but what papers do they mean?

Does a Trinidad fishing boat, sailing near the coast of that island, require English papers, or do not the Venezuelan Government wish to convey that—English or Venezuelan—it should have had a Venezuelan permit at their island of Patos?

Finally, however, after having made it distinctly evident, even according to their own version of the story (which, it must be remembered, is entirely at variance with John Craig's), that there was nothing to justify the seizure of the vessel, they assert that nothing else save the confiscation was possible with reference to a boat found "under such circumstances of guilt."

They then go on to say that article 35 of the Venezuelan fiscal code justifies this action, as it orders preventive officers to take any ship "which may have made a voyage from abroad to a point on the coast where there is no custom-house," but the Venezuelan statements themselves show distinctly that the boat did not do this, for it never

touched the Venezuelan shore. What they do say is that it was in Venezuelan waters.

I have not troubled your lordship with the last part of the Venezuelan note, as it is only a voluminous dissertation on the status of Agripino Lairé.

I have, for the present at all events, contented myself with acknowledging the receipt of this note and with stating that I have forwarded it for the consideration of His Majesty's Government.

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[Inclosure.—Translation.]

*Señor Blanco to Mr. Haggard.*

CARACAS, August 31, 1901.

M. LE MINISTRE: I was keeping at hand on the table of my office your excellency's two notes of the 10th and 21st June last, in hopes of fresh information which, in accordance with my promise given in our conversation on the 18th of that month, I had lost no time in requesting from the ministry of finance with reference to the circumstances connected with the detention of John Craig's boat by a Venezuelan coast-guard ship during the days following on the disturbance of public order on the east coast of the Republic. The doubts which your excellency had presented in the first of the notes mentioned were practically cleared up in the second, since the mere fact of your excellency having, through an accidental error of translation, misinterpreted the sentence relating to the sacks found on board, shows that you could not believe the suspicions of the coast-guard vessel to be the real ground on which the boat was seized.

A new declaration by Lairé just received, and of which I forward an authorized copy, widens the circumstances of the case and proves that, besides the suspicion of contraband, there was attached to the boat that of complicity in the revolution, since it was surprised near the coast where the insurgents were hiding arms.

The act of flight, in avoiding the vigilance of the coast-guard ship, was an additional proof that the crew had no documents enabling them to prove their innocence. He who had the position of master (patron) was not Craig, the self-named owner (dueño) of the boat, but an inhabitant of Margarita of a very different name; and since Lairé was obeying an order of a military character, in time of war and on coasts that had been in rebellion, the results would have been incomprehensible, and even opposed to the exigencies of public order, if he had proceeded in any other way with respect to a boat found under such circumstances of guilt.

Even setting aside the reasons of military obedience which explain the action, what is laid down by article 29 of law 35 of the Venezuelan Fiscal Code would be sufficient to justify it. There, amongst other enactments, it orders the preventive officers to take any ship which may have made a voyage from abroad to a point on the coast where there is no custom-house \* \* \* .

I avail, etc.,

EDUARDO BLANCO.



[Translation.]

UNITED STATES OF VENEZUELA,  
MARITIME CUSTOMS OF GUIRIA,  
*Guiria, July 18, 1901.*

Citizen Agripino Lairret will appear before a judge at this custom-house tomorrow at 9 o'clock to give information on matters which concern him.

He shall sign in proof of his having been summoned.

G. VILLASMIL.

Summoned, for Agripino Lairret, F. Latouche.

A former declaration, which precedes, was presented to this department on the same date by the citizen Col. Agripino Lairret, who, being sworn in the legal form, declared that he was, as has been said, a neighbor of this municipality, single, of a merchant's profession, and capable of giving witness, and being told the cause of his summons, and having read the note from the ministry of finance, where he transcribes that of the ministry of foreign affairs and explains his motive, he declared:

"That being stationed in the place known as Rio Grande, as second in command of some Government forces, he went thence on a scouting expedition, by order of the officer in command, Colonel Rueda, and thence toward the shores of Barlor-ento in search of military stores which the enemy was hiding on the coasts mentioned. Being in Carlaquito, in the hacienda of the brothers Ducharme, a sentinel told me that a vessel was crossing from the shore of Trinidad toward ours, on account of which I gave orders to the sentinel not to do anything, with the object of seeing what the vessel would do. When she had reached Venezuelan waters I went out in its pursuit, giving it chase in front of the hacienda of Señor Gerónimo Solís, called "Tacua." This vessel had no legal papers and was under the command of an individual, a native of Margarita, called Simon (alias El Barrigon) and had on board 25 unused sacks which the captain and master mentioned showed me, having bought them in Trinidad, whence he was coming. On account of all of which, and in obedience to superior orders, I took it and brought it to Carlaquito, where were the rest of the forces under my command. Thence I embarked all my forces and returned to Rio Grande, where my commanding officer was, to whom I gave an account of all that had passed, and handed over to him the vessel in question."

Having read this, he said that it was correct, and he signs.

At Agripino Lairret's request, because he was unable to sign.

A. GUEVARA.

The Administrator,

G. VILLASMIL.

A true copy.

The Director, MANUEL FOMBONA PALACIO.

MINISTRY FOR FOREIGN AFFAIRS,

DIRECTION OF FOREIGN PUBLIC RIGHT,

*Caracas, August 30, 1901.*

[Extract.]

*Mr. Haggard to the Marquess of Lansdowne—(Received October 10).*

No 21.]

CARACAS, *September 14, 1901.*

In your lordship's dispatch of the 20th ultimo you instruct me to procure any further evidence which may be available with a view to

clear up the facts connected with the burning of the sloop *Maria Teresa* by the Venezuelan man-of-war *Miranda*.

The only manner in which this is at all possible is by addressing a further note to the Venezuelan Government on the subject, and I have the honor to inclose a copy of that which I have consequently written to the minister for foreign affairs. It is, however, unhappily hardly to be expected that this will have much, if any, result in helping to clear up the facts connected with the case, but I have had to adopt this means, as there is no other available, and I will forward to your lordship his excellency's reply when I receive it.

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[Inclosure.]

*Mr. Haggard to Señor Blanco.*

CARACAS, September 13, 1901.

M. LE MINISTRE: His Majesty's Government have had before them the views of that of Venezuela with reference to the burning off *Guiría* on the 13th January last of the sloop *Maria Teresa*, the property of a British subject named Wilson, and the imprisonment and ill-treatment of her master, Mr. Patterson, and her crew.

In view of the discrepancies between the versions of the incident given by the Venezuelan Government in your excellency's notes of the 25th May and the 8th June on this subject and that forwarded to the Marquis of Lansdowne, His Majesty's principal secretary of state for foreign affairs, by His Majesty's chargé d'affaires, I am instructed to procure further evidence with a view to clearing up the facts connected with this case. I should therefore be much obliged if your excellency would cause further inquiry to be made into this matter, and I would at the same time request your excellency to furnish me with some confirmation of the statement contained in the note to your excellency from the minister of customs of the 6th May, inclosed in your excellency's note of the 8th June, that "Mr. Patterson had placed himself at the disposition of the rebels in Trinidad," in support of which no evidence of any kind is adduced by his excellency.

I avail, etc.,

W. H. D. HAGGARD.

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[Extract.]

*Mr. Haggard to the Marquess of Lansdowne—(Received November 7).*

No. 22.]

CARACAS, October 9, 1901.

In my dispatch of the 14th ultimo I ventured to express the fear that a fresh inquiry which, as the only possible means of carrying out your lordship's instructions, I had addressed to the Venezuelan Government with reference to the facts connected with the burning of the *María Teresa* would not be very fruitful of results; and as your lordship will see by the inclosed reply of the Venezuelan Govern-

ment to my inquiry, my fears have been justified, for they politely decline to make any further inquiry.

They, however, do enter again into the matter, and seem to attempt to explain the discrepancies in the evidence, with the result that the "confusion is worse confounded;" for instance, they state that the declarations of Messrs. Wilson and Patterson as to the property of the boat are "in flat contradiction to the boat's register," whereas the commander of the *Miranda*, who burnt the *María Teresa*, affirms in his report to the minister of war and marine, inclosed in the note of the Venezuelan Government of the 25th May, that "on board the *María Teresa* there was found no document proving to whom the boat belonged," and the inspector of customs at Guiria, in his report to the minister of finance, inclosed in Doctor Blanco's note of the 8th June, goes further and asserts that the *María Teresa* was unprovided with "commission, register, or roll," so, according to his excellency, the declarations of Messrs. Patterson and Wilson are in flat contradiction to a document which, according to the officers on whose statements are based the representations of the Venezuelan Government, had no existence.

The proof offered by the Venezuelan Government of the statement that Mr. Patterson "had placed himself at the disposition of the rebels in Trinidad" is now furnished in the further statement "that the sloop was bound to places known to be then occupied by revolutionary bands." This would seem to be nil ad rem.

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[Inclosure 1.—Translation.]

*Señor Blanco to Mr. Haggard.*

CARACAS, September 30, 1901.

M. LE MINISTRE: This department has given its careful attention to your excellency's polite note of the 13th instant, in which you ask for further information concerning events which happened last January connected with the sloop *María Teresa*. The motive of this new request is the discrepancies which exist between the affirmations or declarations of the military and fiscal authorities of Venezuela and those which had been sent to His Majesty's honorable legation. The one which appears to have chiefly attracted notice is that which refers to the connivance of Mr. Patterson with the refugee rebels in Trinidad. A new investigation is desired on this point.

With reference to your excellency's polite note I must state, with the greatest deference, the fact that the declarations which are not held by the legation or by His Majesty's Government as convincing come from authorities who, when they took over their employment, swore to fulfill their duties faithfully; and I ought also to mention that the other declarations come from two private individuals—Mr. Wilson and the above-mentioned Mr. Patterson—who are represented as affirming a point, that of the property of the boat, which is in flat contradiction to the boat's register. Moreover, in this one must consider the

complete agreement as regards the principal points between Patterson's confessions and the information supplied by the commander of the *Miranda*. The former, in effect, allows that they let him depart for Trinidad, and that it was after his departure that they proceeded definitely against the boat. This Commander Pellicer also stated, and he added that this second step had been taken owing to the further action of the boat, which in place of directing its course to Trinidad again went toward the revolutionary coast. It would be useless to hope that Mr. Patterson should confess to the latter, but the agreement as to the circumstances which attended the first part of the occurrence is a guaranty of veracity as regards the subsequent parts.

The assertion of the administrator of the customs at Guiria, which appears to have especially attracted the attention of your excellency's Government, finds its best confirmation in the fact of the sloop having weighed anchor bound to places known to be then occupied by revolutionary bands.

I beg of your excellency to be good enough to reconsider the matter in the right light, and to put before His Majesty's Government the foregoing facts, in which they will no doubt find another proof that the declarations with respect to the event well explain the case without making any further proceedings necessary.

Accept, etc.,

EDUARDO BLANCO.

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[Inclosure 2.]

*Mr. Haggard to Señor Blanco.*

CARACAS, October 5, 1901.

M. le MINISTRE: I have the honor to acknowledge the receipt of your excellency's note of the 30th ultimo, stating that the Venezuelan Government see no reason for making a fresh inquiry into the circumstances connected with the burning of the *María Teresa*.

I am losing no time in forwarding this note to His Majesty's Government.

I avail, etc.,

W. H. D. HAGGARD.

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*Mr. Haggard to the Marquess of Lansdowne—(Received November 7).*

No. 23.]

CARACAS, October 15, 1901.

MY LORD: I have the honor to inclose a translation of a note from the Venezuelan Government disclaiming any intention of conveying, in previous correspondence, any imputation against the authorities of Trinidad in connection with facilities stated by the Venezuelan Government to be afforded in that island toward revolutionary designs directed against Venezuela.

I have also the honor to inclose a copy of my reply to this note, and to state that I am forwarding this correspondence to the governor of Trinidad.

I have, etc.,

W. H. D. HAGGARD.

[Inclosure 1.—Translation.]

*Señor Blanco to Mr. Haggard.*

CARACAS, October 7, 1901.

M. LE MINISTRE: I read to the President your excellency's note of the 4th, and received instructions from him not only to make known to you, as I do, his grateful thanks for the transmission of the opinions contained in my note of the 1st, but also in order to explain the point which your excellency mentions in the last part.

With reference to the facilities upon which the refugees in Trinidad count in the progress of their designs against Venezuela, I did not for a single moment wish to insinuate the charge either of assistance extended or consent obtained from the colonial authorities, but was referring to the liberty with which the enemies of the existing administration of the Republic carry out there their plans. A proof of the hostile deeds which there are done without hindrance lies in the fact that only a short time ago two bodies of invaders issued from the colony. The first, which was completely conquered, returned to the island, and of the second various prisoners, forming a living testimony of the origin of the invasion, fell into the power of the Venezuelan military authorities as the result of a defeat.

As for the rest, the Government well know that they can not doubt the neutral spirit of the authorities of Trinidad, and their only complaint is that no direct action is taken to prevent acts of disturbance, which perhaps do not do so much harm by their immediate effects as by the precedent which they establish, engendering future distrust toward those who live by the honorable practice of trade in the eastern part of the Republic.

Accept, etc.,

EDUARDO BLANCO.

[Inclosure 2.]

*Mr. Haggard to Señor Blanco.*

CARACAS, October 11, 1901.

M. LE MINISTRE: I have read with great pleasure your excellency's note of the 7th instant, in which your excellency is pleased to express the grateful thanks of the President and of yourself for the transmission of the opinions contained in your note of the 1st instant on the subject of matters connected with relations between Trinidad and Venezuela.

Your excellency was, at the same time, good enough to explain a phrase in your previous note with reference to the facilities stated therein to be afforded in the Island of Trinidad to revolutionary designs against Venezuela, and to disclaim the intention in these words of any imputation against the authorities of Trinidad.

I am sincerely glad that this should be the case, and it will give me much pleasure to forward this explanation both to His Majesty's Government and to his excellency the governor of Trinidad.

I avail, etc.,

W. H. D. HAGGARD.

*Colonial Office to Foreign Office—(Received November 7).*

No. 24.]

DOWNING STREET, November 6, 1901.

SIR: I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquess of Lansdowne, the accompanying

copy of a dispatch, with inclosures, from the governor of Trinidad relating to another violation of British territory at Patos Island by Venezuelan officers.

I am, etc.,

H. BERTRAM COX.

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[Inclosure 1.]

*Governor Sir A. Moloney to Mr. Chamberlain.*

GOVERNMENT HOUSE, *October 3, 1901.*

SIR: With reference to previous correspondence on the subject of the outrages committed by Venezuelan "guardacostas" on British territory at Patos, I have the honor to forward the inclosed correspondence relative to the seizure of the sloop *Pastor* by the Venezuelan gunboat *Totumo* off that island.

A copy of the correspondence now submitted has been sent to the British minister at Caracas.

I have, etc.,

ALFRED MOLONEY.

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[Inclosure 2.]

*Petition of Numa Audry, of Trinidad.*

His Excellency Sir ALFRED MOLONEY, K. C. M. G.,

*Governor and Commander in Chief in and over the*

*Colony of Trinidad and Tobago, Vice-Admiral thereof, etc.:*

The humble petition of Numa Audry, of the town of Port of Spain, in the island of Trinidad, sheweth:

Your petitioner is a native of this island.

Your petitioner was a passenger on board the sloop *Pastor*, which left here for Guiria on the fourth evening of Tuesday the 20th August last and arrived at Patos on Wednesday the 31st.

Whilst the sloop was anchored at Patos the Venezuelan gunboat *Totumo* passed, and lowered her steam, and sent a boat with a complement of five men armed with rifles, and on getting near the men aimed their guns at us.

Upon leaving Patos, sailing for Gasparee for British protection, the sloop had not got more than 250 yards from Patos when the captain of the Venezuelan gunboat commanded the captain of the sloop to stop, and then fired at the sloop. The captain was taken prisoner and put on board the *Totumo*, and the next morning the sloop was towed to Guiria by the *Totumo*. On arriving at Guiria the administrator there ordered the passengers, male and female, a boy, and your petitioner to land, and were taken under the charge of policemen to the customs.

Your petitioner was placed in a corner as prisoner, and was guarded by a water policeman, whilst the woman and boy were allowed to stay outside, and they were afterwards discharged; but your petitioner was kept there for two hours.

When the harbor master came your petitioner had to get the captain of the sloop to intercede for him, and your petitioner was then released on his own bail; and on the next day, upon your petitioner producing the passport, was set free.



Your petitioner is at present engaged in the balata gum trade, and had made engagements with certain persons at Guiria, in the United States of Venezuela, to whom your petitioner made advances in money.

Your petitioner suffered grievously, both mentally and physically, by the proceedings of the constituted authority of the United States of Venezuela.

Your petitioner, as a British subject, claims through his excellency protection from the Government of the United States of Venezuela, and damages and compensation to the extent of £500, and also all costs and damages which your petitioner has suffered.

Wherefore your petitioner, as a British subject, humbly prays that his excellency may be pleased to claim, on behalf of your petitioner, from the Government of Venezuela, the sum of £500 for the injuries and violence sustained by your petitioner, and all costs which your petitioner has suffered and sustained, and such further and other relief as the nature of your petitioner's case may require.

And your petitioner, as in duty bound, will ever pray, etc.

NUMA AUDRY.

SEPTEMBER 12, 1901.

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[Inclosure 3.]

*Statement by Numa Audry.*

I am a Trinidadian.

First account in Mirror was given by him and is correct—that published to-day is not correct.

Shows passport dated the 19th August issued by Venezuelan consul at Port of Spain. Touched at Patos, saw some stuff put ashore; the gunboat, seeing us, came in; she searched the vessel, but only took the stuff which was on shore. and the men on shore, on board the gunboat. They sent for the captain of the sloop, but he refused to go, but subsequently they took him. After the events given in the Mirror the collector of customs (administrator) at Guiria offered to return the goods seized on payment of duty, but the men refused. I was present, and could catch enough to understand what took place.

Everybody on the sloop was ultimately released, and I returned to the sloop. I was prevented by the results of my fall from doing my business at Guiria, and I intend to forward a claim for compensation.

The firing took place after we left Patos—about 250 yards off—but guns had been pointed at us when at anchor in the bay.

My box was rummaged and articles—e. g., razors—were stolen.

The sailors who were seized all spoke English, and were presumably British subjects. The navigator was a British subject; he was not transferred to the steamer. The "paper" captain was a Venezuelan.

H. C. BOURNE,  
*Acting Colonial Secretary.*

SEPTEMBER 10, 1901.

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[Inclosure 4.]

*Statement by Abraham Williams.*

I was born in Tobago. I am a British subject. I have been in Trinidad twelve years. I have been working as a sailor and captain all that time. I can navigate between here and Venezuela and here and Tobago. I know the coasts. I have been employed on the *Pastor* about three or four years. The

owner is André Carcino. He employed me. He pays me by the voyage, \$5 a voyage. I steer the ship. I left Trinidad on the 20th of August. The boat was in charge of Euphemio Bompert, and I had to obey his instructions. Leaving here we went to Patos. Bompert ordered me to do so, and we did so. When we got to Patos we stopped there the whole day. We landed some cargo that we had. We met one boat in Patos, and two others came to Patos together with us. These boats had no names. Spanish people were in these boats. I do not know all the names of them. I know one of them, Mathias Smith, had a large boat. I can not remember the names of any of the others. These two boats left here with us. I was towing two of them and they were empty. These two boats landed the cargo which we had for them. The cargo was tobacco, cigarettes, flour, rice, salt fish, tassajo. The *Pastor* was cleared at the customs here, and I cleared with respect to all these goods. It was arranged that we should go into Patos to hand over the cargo to these other boats. We landed our cargo, and in the afternoon I was coming out and going to Guiria with the balance of cargo and some passengers, among whom was Mr. Audry, and a female and a boy. When I was coming out the steamer came across the passage. They called upon me to let go the anchor, and we did so. He lowered his boat and came alongside with four men armed with guns and two pulling and asked me where I was bound to. I told him I had come from Trinidad and was going to Guiria, and he asked me where are my papers.

He read them and went below and inspected, and he asked me where the three boats belonged. I told him I did not know anything about them, as we met them there.

He went ashore and formed up his men, and he wanted the men to all go on board the steamer, and some objected, as they were in English waters. He said they must all go or else he will do something. He then ordered his men to take the goods that were ashore and put them on board his steamer, and he made the men prisoners, and put them also on board. After that he came back to me. He said that the captain had ordered him to tell me to come alongside. I said we were in English waters and only an English cruiser could make us come out of there. I said we will leave here when we want to, because we are in English waters.

He went back to his steamer; he started going to Guiria. I was coming back to Trinidad in consequence of what they had done. Bompert ordered me to do so. It was then getting dark. As we were coming out the steamer called out to me and fired after me. The ball passed between the spars. He was trying to prevent me from coming to Trinidad, and then I started to go to Guiria. He gave me two hours to take the Spanish water, and when I did so he called me to heave to and ordered me to lower a boat, and Bompert refused, as the sea was too rough, so he lowered the boat and carried Bompert a prisoner on board the steamer.

He left me with two men armed. There was no wind, and I drifted back into English waters. At the next tide I again drifted toward Guiria, and on the next day the same steamer towed me into Guiria.

When I got to Guiria the harbor master ordered me to land the passengers. We were there until the next day. They did me nothing. I carried the cargo to Sora, a village lower down, and gave it to the owner.

They did me nothing. The harbor master told Carcino that when he returned to Trinidad not to report what had been done. Carcino told me this. Bompert is in Guiria. Carcino is there. I came back in the *Pastor* with Carcino.

Since that the vessel has gone again down. I have not been discharged, but I was scared, as they threatened me. There were no guns or arms among the goods I landed. These goods do not appear in the consul's papers.

*Customs to Foreign Office—(Received November 9).*

No. 25.]

CUSTOM-HOUSE, November 8, 1901.

SIR: I am directed by the commissioners of customs to transmit, for the information of the secretary of state for foreign affairs, copies of reports received from officers of this department with regard to the fitting out of the *Ban Righ*.

I am to request to be informed, as soon as possible, whether any action is to be taken by this department in the matter.

I am, etc.,

R. HEDERSON.

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[Inclosure 1.]

*Mr. Muir to commissioners of customs.*

LONDON, November 6, 1901.

HONORABLE SIRS: Information reached me yesterday that a vessel was fitting out in the Thames in a suspicious manner. The engineer was receiving £25 a month, to be increased to £50 when the vessel sailed. The crew was much larger than usually carried by a vessel of her size, and they were being paid at a proportionate rate.

From the annexed particulars, obtained from the registrar-general, it will be seen that the vessel has quite recently passed into the hands of a foreigner who is a naturalized British subject.

I communicated with the inspector of waterguard, from whom I have received the annexed report, and who has instructed the chief preventive officer to report at once anything further of a suspicious nature which comes under his notice.

The master of the vessel has to-day made the inclosed ballast declaration, that he is bound to Callao via Antwerp, and has signed the usual request for bonded stores.

From the various reports received, the suspicion naturally arises that the vessel is fitting out as a privateer, and I have accordingly felt it my duty to report the circumstances.

Inquiry at the shipping office might be useful as to the number and nationality of the crew.

W. MUIR, Collector.

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[Inclosure 2.]

*Entry made in probate and naturalization book, London, October 28, 1901.*

De Paula, Rudolph Hermann Wolfgang Leopold.

Naturalized under naturalization acts, 1870, on the 22d June, 1876. Oath of allegiance taken 29th June, 1876.

R. DE PAULA.

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[Inclosure 3.]

*Mr. Clandillon to inspector of waterguard.*

ROOM 8, CUSTOM-HOUSE, November 5, 1901.

SIR: Acting under your instructions, I to-day proceeded to the Victoria dock and boarded the steamship *Ban Righ*, late Aberdeen Steamship Company, which

is lying at the north quay. I found a number of carpenters and riveters at work; the former were engaged building what the mate informed me were lockers in the extreme ends of the fore and after holds, but which one of the workmen subsequently told me were powder magazines. The riveters were unshipping the lower part of the funnel casing.

The compartment in the fore hold extends the width of the vessel, and is about 12 feet long, built entirely of wood and raised about 3 feet from the flooring and the entire height of the lower hold. The after compartment is not so forward in construction. Entering the cabin, which is aft, I noticed that a hatch is being cut which appears to me to be over the magazine. The mate volunteered the statement that this hatch was being cut to get at stores. He also informed me that the after deck above the cabin had been strengthened, as a signal gun was about to be erected there. The vessel is fitted up with electric light, and men are now employed fitting up the necessaries for a flash light on the foremast. Alongside the vessel I noticed a barge loaded with sacks of coal, or what the mate told me were bags of coal, and appeared to be such; these, he informed me, would be stowed away just as they were in the 'tween-decks each side of the engine room.

The mate seemed reticent on any matter relating to the ship's future, but I gleaned in conversation that she was going to sign on a crew to-day and sail for Antwerp almost immediately, where stores were to be shipped, and then the vessel, which had been purchased by a syndicate, was going on a pleasure cruise to the West Indies and the Spanish Main.

Respectfully submitted.

C. CLANDILLON.

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[Inclosure 4.]

*Mr. Clandillon to inspector of water guard.*

ROOM 8, CUSTOM-HOUSE, November 6, 1901.

SIR: In continuation of my report of yesterday I beg to state that I again visited the vessel this morning, and ascertained that the barge alongside contained coal, as stated.

I also found men busily employed laying an ironwork foundation on the after-deck (above the cabin), which they told me was for a swivel gun, and in every way appeared to be such.

I also noticed that the hatch in cabin entry was almost completed, together with another in the 'tween deck, both being connected by a cased wall leading to the after magazine.

I may observe that during my twenty-four years' experience on water-guard duty I have never remarked arrangements as described on ordinary merchant or passenger vessels.

Respectfully submitted.

C. CLANDILLON.

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[Inclosure 5.]

*Mr. Clandillon to inspector of water guard.*

ROOM 8, CUSTOM-HOUSE, November 8, 1901.

SIR: I beg to report that, acting on your instructions, I this morning visited the mercantile marine office, tidal basin, where the crew of the steamship *Ban Righ* shipped this morning, and through the kindness of the superintendent examined the articles.

I find the crew consists of master, 3 mates, 4 engineers, 1 purser, 1 assistant purser, 1 carpenter, 1 boatswain, 1 lamp and A B., 9 able seamen, 1 donkeyman, 3 greasers, 9 firemen, 5 stewards, and 2 cooks; 42 in all, and all British subjects.

Voyage, London to Antwerp, thence to West Indies, touching any ports or places therein and on route, thence proceeding to Colon, where the crew will be discharged with the consent of His Britannic Majesty's consul or other proper authority, maximum period of engagement not exceeding six months.

The master to provide the crew with a second-class passage to London or Southampton by first home steamer from Colon; wages till time of arrival.

The clothing provided by the owner shall be considered as ship's stores, and shall be delivered to the master at the end of the voyage; it will be given to each member of the crew who conducts himself to the entire satisfaction of the master.

Respectfully submitted.

C. CLANDILLON.

P. S.—Vessel will probably sail Sunday next.

C. C.

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[Inclosure 2.]

*Mr. Clandillon to inspector, water guard.*

ROOM 8, CUSTOM-HOUSE, November 8, 1901.

SIR: Re steamship *Ban Righ*.

I beg to report that this afternoon, acting on your instructions, I again visited this vessel, and find that since my last visit the foundation (iron) for a swivel gun is now laid on the fore deck, similar to that on the after deck; this one the mate informs me is for the man on the lookout to stand in, a statement which is questionable.

I also observed that there has been a communication made from the forward deck to the magazine in the forehold, by means of a ventilator, and also a well similar to that previously described by me in the after hold, and which, one of the workmen informed me, was for getting the ammunition through, and appears to me to be a correct statement.

Respectfully submitted.

C. CLANDILLON.

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*Customs to foreign office—(Received November 14).*

No. 26.]

CUSTOM-HOUSE, November 14, 1901.

SIR: With reference to my letter of the 8th instant, I am now directed by the commissioners of customs to transmit, for the information of the secretary of state for foreign affairs, and for such directions as he may see fit to give, copies of letters received from Mr. R. de Paula (the owner) and from the Colombian consul-general, with regard to the detention of the *Ban Righ*.

I am to add that the consul-general called personally with his letter and stated to the secretary to the board that the vessel was intended to load arms and ammunition at Antwerp for his Government.

The Admiralty have also been apprised.

I am, etc.,

R. HENDERSON.

[Inclosure 1.]

*Mr. R. de Paula to customs.*

1A, ST. HELEN'S PLACE,

London, November 13, 1901.

SIR: I have the honor to acknowledge the receipt of your letter of this day with respect to the detention of the steamship *Ban Righ*, and to acquaint you that I have requested the Colombian consul-general to furnish you with full explanations, and should these, as I trust, prove satisfactory to you, I would respectfully request that permission for the vessel to proceed by to-morrow afternoon's tide be notified to me and your officers in charge at the earliest possible moment.

I beg, etc.,

R. DE PAULA.

[Inclosure 2.]

*Señor Calderon to customs.*

CONSULATE-GENERAL OF COLOMBIA,

46 Queen Victoria street, London, November 13, 1901.

DEAR SIR: I beg to inform you that the steamship *Ban Righ*, now lying off the custom-house in the Victoria Docks, is for the Government of Colombia and consigned to Colon.

I will be very much obliged if you kindly make every effort in order that the vessel can proceed by to-morrow afternoon's tide.

Yours, truly,

G. R. CALDERON.

[Telegram.]

*The Marquess of Lansdowne to Mr. Haggard.*

No. 27.]

FOREIGN OFFICE, November 15, 1901.

Ascertain from Venezuelan Government whether they hold that a state of war exists or not with Republic of Colombia.

Reply by telegraph.

*The Marquess of Lansdowne to Señor Ponce.*

No. 28.]

FOREIGN OFFICE, November 15, 1901.

SIR: I have the honor to inform you that Señor Calderon, the consul-general for Colombia at London, has stated to the commissioners of His Majesty's customs that a steamship named the *Ban Righ*, now lying in the Victoria docks, "is for the Colombian Government, and consigned to Colon."

I have to request you to be so good as to inform me, at your earliest convenience, whether this vessel has, in fact, been purchased by the Colombian Government.

I have, etc.,

LANDSDOWNE.



[Translation.]

*Señor Ponce to the Marquess of Lansdowne—(Received November 16).*

No. 29.]

COLOMBIAN LEGATION,  
London, November 15, 1901.

MY LORD: In reply to your excellency's note of to-day relative to the vessel *Ban Righ*, I have the honor to inform you that Señor Calderon, consul-general of Colombia in London, has communicated to me the copy of a letter on the subject which he has received from Mr. R. de Paula, and which runs as follows:

1A ST. HELENS PLACE, LONDON [undated].

THE CONSUL-GENERAL OF COLOMBIA.

SIR: In reply to your inquiry, I beg to state that as my agreement contemplates the delivery of the vessel at Colon, she sails under the British flag and my ownership until the contract shall be completed.

I have, etc.,

R. DE PAULA.

I further have the honor to inform your excellency that Don Francisco Fonseca Plazas, who has just arrived in London in the capacity of courier de cabinet of the Government of Colombia at this legation, states that the *Ban Righ* is intended for the service of the Government of Colombia, and asks for my intervention with a view to the vessel being dispatched as quickly as possible.

In these circumstances, I request that your excellency will be so good as to give the necessary orders.

I have, etc.

IGNACIO GUTIÉRREZ PONCE.

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[Telegram.]

*Mr. Haggard to the Marquess of Lansdowne—(Received November 21).*

No. 30.]

CARACAS, November 21, 1901.

With reference to your lordship's telegram of the 15th November, I have been officially informed by the minister for foreign affairs that no state of war exists between Colombia and this country.

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*Foreign office to customs.*

No. 31.]

FOREIGN OFFICE, November 21, 1901.

SIR: With reference to your letter of the 14th instant, respecting the detention of the steamer *Ban Righ*, I am directed by the Marquis of Lansdowne to state to you, for the information of the commissioners of His Majesty's customs, that His Majesty's minister at Vene-

zuela has reported by telegraph that no state of war exists between the republics of Venezuela and Colombia.

Under these circumstances, Lord Lansdowne is of opinion that the *Ban Righ* may be at once released.

I am, etc.

T. H. SANDERSON.

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[Extract.]

*Mr. Haggard to the Marquess of Lansdowne—(Received November 22).*

No. 32.]

CARACAS, October 27, 1901.

The governor of Trinidad forwarded me on the 7th October a correspondence relating to the seizure of the Venezuelan sloop *Pastor* by the Venezuelan gunboat *Totumo* off the island of Patos.

It would appear that the Venezuelan sloop *Pastor* was engaged on a smuggling expedition, the base of which was the island Patos, that the Venezuelan gunboat *Totumo* landed a party of men on Patos and there seized the goods which had been landed by the *Pastor*, and that while the boat was in British waters she was fired upon by the Venezuelan gunboat.

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*Customs to foreign office—(Received November 22).*

No. 33.]

CUSTOM-HOUSE, London, November 21, 1901.

SIR: With reference to my letter of the 14th instant, I am now directed by the commissioners of customs to transmit herewith, for the information and directions of the secretary of state for foreign affairs, copy of a further communication this day received from the consul-general for Columbia with regard to the *Ban Righ*.

I am, etc.

R. HENDERSON.

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[Inclosure.]

*Señor Culderon to customs.*

CONSULATE-GENERAL OF COLOMBIA,

46 Queen Victoria Street, November 21, 1901.

DEAR SIR: In the absence of our minister, at present in Berlin, I request you to convey to the proper authorities the fact that the detention of the steamship *Ban Righ* and the publicity which the matter has attracted is causing incalculable injury to my Government and country, and that in the name of my Government I request that the release of the ship be no longer delayed.

It is not out of place to remark that the reported downfall of Colon, which is stated to be in the hands of the revolutionists, increases my anxiety in the matter.

Considering the friendly relations existing between England and my country, I safely rely that my request will receive immediate attention.

I am, etc.,

G. R. CALDERON.

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*Customs to foreign office—(Received November 23).*

No. 34.]

CUSTOM-HOUSE, November 22, 1901.

SIR: With reference to your letter of yesterday's date, I am directed by the commissioners of customs to state, for the information of the secretary of state for foreign affairs, that they issued instructions this morning for releasing the vessel *Ban Righ* from detention.

I am, etc.,

R. HENDERSON.

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[Extract.]

*Colonial Office to Foreign Office—(Received November 25).*

No. 35.]

DOWNING STREET, November 23, 1901.

I am directed by Mr. Secretary Chamberlain to transmit, for the information of the Marquess of Lansdowne, a copy of a dispatch from the Government of Trinidad on the subject of the export of arms and ammunition from Trinidad to Venezuela.

Mr. Chamberlain concurs in the views which the governor expresses, and proposes, should Lord Lansdowne see no objection, to inform him that he is content to leave the matter of the exportation of arms to his discretion.

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[Inclosure.—Extract.]

*Governor Sir A. Moloney to Mr. Chamberlain.*

GOVERNMENT HOUSE,  
Trinidad, October 24, 1901.

I have received a dispatch from the British minister at Caracas on the relations between Trinidad and Venezuela.

An article in the Port of Spain Gazette, to which Mr. Haggard refers, gives an account, which is far from accurate, of the matter with which it deals. The actual occurrences to which allusion is made would appear to be the following:

(a) The case of *Regina v. Ramus* and others: In 1888 certain Venezuelan partisans of Señor Crespo, who was then in Trinidad, took passage on board of one of the Orinoco steamers, owned by Mr. Lee, an American citizen resident in Port of Spain, and when only a few yards from the shore attempted to seize the vessel. They were successfully resisted by Mr. Lee's son, and in the fray which ensued two persons were shot and one was, it was believed, drowned. The offenders were brought before the stipendiary magistrate of Port of Spain and committed for trial on a charge of conspiracy. The Venezuelan witnesses did not appear at the criminal assizes, and the trial was adjourned to the next session. In the interval Sergeant, now Inspector Brierly, was sent to Caracas

and endeavored to persuade the Venezuelan Government to cause the attendance of the witnesses, of whom several were officials.

In the meantime, however, a reconciliation seems to have been effected between the President and Crespo, with the result that promises were all that could be obtained; and at the trial the witnesses were absent, and the prisoners were discharged.

(b) The case of the *Tubal Cain*: In 1880 a conspiracy to seize a steamer, owned by a Trinidadian, as she was passing Icacos, was reported. The vessel avoided the danger, but the police captured a number of armed Venezuelans on the spot. The latter were convicted of carrying arms without a license, and punished.

(c) The alleged case of the pillage of Yaguarapare, in Venezuela, about the year 1895 was never officially reported, and depends, as far as this Government is concerned, upon the newspaper statements.

(d) The Ducharme case occurred in 1895: Some fishermen, British subjects, were for some alleged fishing offense in Venezuelan waters locked up in a Venezuelan police station. They effected their escape and put to sea, but landing on another point of the Venezuelan coast for the ostensible purpose of getting water, they were resisted by Mr. Ducharme, who fired at them, and they set on him with cutlasses and killed him. The culprits were arrested on their return to Trinidad, and the Government was anxious to punish them, but the laws of the colony gave no jurisdiction to the courts here to try persons accused under the particular circumstances. The matter was referred to the secretary of state, and certain amendments of the law were then made.

In connection with any request to have the exportation of arms for Venezuela prohibited, the question of the dislocation and diversion of the colony's trade has to weigh considerably. Again, the enforcement of export prohibition has many difficulties, and is, indeed, scarcely practicable. On the other hand, the prohibition of such imports into the colony could be absolutely effected and controlled, and as I considered that such action would be appreciated and welcomed as an additional friendly act by the Venezuelan authorities, whoever they might be, and that it might possibly contribute to the solution of the 30 per cent difficulty, I took it upon myself to ask our minister to feel his way in the direction indicated, when he might find it convenient to revive the discussion of the preferential treatment, to which great exception continues naturally to be taken in this colony.

As you are aware, the 30 per cent preferential duty over and above the ordinary import duties was originally imposed in 1881, as an unfriendly act, by the Government of Venezuela.

Here, as elsewhere in the Empire, we have consistently maintained the tradition of allowing the fullest freedom of domicile to political refugees. The right of asylum has been conceded impartially to men of all parties and representatives of every opinion. Whilst they respect the privilege of domicile, appreciate the distinction between liberty and license, and conform to our laws, it is no part of our province to trouble ourselves with their political antecedents, views, or aspirations. Our experience of the Spanish main has taught us that the refugee or revolutionist of one day may actually be the supreme power the next. Such was the case with Gen. Guzman Blanco, to whom we stand indebted for the 30 per cent additional taxation.

*Consul-General Sir G. Perry to the Marquess of Lansdowne—  
(Received November 30).*

No. 36.]

ANTWERP, November 28, 1901.

MY LORD: I have the honor to report to your lordship that the British steamship *Ban Righ*, of Aberdeen, official No. 60704, C. E. Willis, master, arrived at Antwerp on the 24th instant from London and not the 26th instant, as stated in the Antwerp newspapers. The vessel in question would appear to have been arrested by the custom-house officers in London owing to her being loaded with a considerable quantity of arms and ammunition. The *Ban Righ* was afterwards released, and subsequently left England and was allowed to proceed to Antwerp direct. The master deposited the steamer's papers with the British vice-consul, in charge of the shipping office, but, the vice-consul says, made no report regarding the cargo on board.

According to the newspapers the *Ban Righ* has come here to complete loading, and is alleged to have taken on board a large quantity of rifles and ammunition of French manufacture, sent to Antwerp by a Paris forwarding agent. The steamer is further stated to be about to load a consignment of shell, which she will take on board at the Pipe de Tabac, about 20 miles below Antwerp.

This large amount of shell arrived from Dunkirk by barges. The steamer also has a great quantity of coal on board, and is to ship another 150 tons here—which seems to indicate that she is to undertake a long voyage—so as not to be forced to replenish her bunkers en route.

I should add that the crew on board the *Ban Righ* numbers 41 hands, and that the vessel is sailing at 3 a. m. to-morrow, the 29th instant, for the West Indies, according to the master's statement.

I have, etc.,

GERALD DE COURCY PERRY.

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*Foreign office to colonial office.*

No. 37.]

FOREIGN OFFICE, November 30, 1901.

SIR: In continuation of previous correspondence on the subject of Patos Island, I am directed by the Marquis of Lansdowne to state, for the information of the secretary of state for the colonies, that a further dispatch has been received from His Majesty's minister at Caracas relative to the claim of the Venezuelan Government to that island.

Mr. Haggard incloses two notes from the Venezuelan minister for foreign affairs.

The arguments advanced in the first note, which forms inclosure 1 to the dispatch, do not appear to Lord Lansdowne to be of sufficient

importance to call for a reply; and in the second note, inclosure 3, Señor Blanco agrees again to suspend the correspondence, but without prejudice to any of the rights and titles of Venezuela, all of which he formally reserves.

Had the question rested there it might have been preferable not further to pursue the discussion for the moment.

In view, however, of the fact that the Venezuelan gunboat *Totumo* landed a party of men on Patos and there seized the goods which had been put ashore by the *Pastor*, and that while this latter vessel was in British (Patos) waters she was fired upon by the *Totumo*, it seems clear that the Venezuelan Government are determined to consider and to treat Patos as belonging to the Republic; and in these circumstances, even if the particular incident should not be considered to constitute a very strong case of aggression, the repeated violation of territory may make it desirable to record a further strong remonstrance against any infraction of the sovereign rights of Great Britain.

Lord Lansdowne would be glad to be favored with Mr. Chamberlain's views on this point.

I am, etc.,

FRANCIS BERTIE.

*Colonial office to foreign office—(Received December 13).*

No. 38.]

DOWNING STREET, *December 12, 1901.*

SIR: I am directed by Mr. Secretary Chamberlain to acknowledge the receipt of your letter of the 30th ultimo, on the subject of the pretensions of Venezuela to Patos Island.

I am to request you to inform the Marquis of Lansdowne that Mr. Chamberlain concurs in the proposal that a further remonstrance should be recorded against any infraction of the sovereign rights of Great Britain over the island of Patos, such as occurred in the case of the *Pastor*.

I am, etc.,

C. P. LUCAS.

[Telegram.]

*The Marquess of Lansdowne to Mr. Haggard.*

No. 39.]

FOREIGN OFFICE, *December 16, 1901.*

With reference to your dispatch of the 27th October respecting the action of Venezuelan gunboat in landing men on the island of Patos, confiscating goods put ashore there by the sloop *Pastor*, and even firing on the sloop while she was in British waters; in view of this incident and of the renewed violation of British territory, I should wish you to address to the Venezuelan Government a strong remonstrance against any infraction of British sovereign rights over Patos.



[Extract.]

*Mr. Haggard to the Marquess of Lansdowne—(Received January 3, 1902).*

No. 40.]

CARACAS, November 26, 1901.

The constantly recurring question of the export of arms from Trinidad was brought up again in the note of the Venezuelan Government, of which I have the honor to inclose a translation.

The mention in this note of the advantages of reciprocity gave me an opportunity of putting the case on this basis before the Venezuelan Government from the probable point of view of the governor of Trinidad, in the reply of which I have the honor to inclose a copy.

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[Inclosure 1.—Translation.]

*General Pachano to Mr. Haggard.*

CARACAS, November 18, 1901.

**M. LE MINISTRE:** The Government has trustworthy information that a few days ago a great quantity of rifles were disembarked on the island of Tobago, together with the corresponding amount of cartridges, and of the fact that the operation has been carried on in an unusual manner to that generally employed in the transshipment and natural reexportation of merchandise, since, as would appear, in addition to the goods not having been consigned to any commercial house, the arms remained deposited there as if in the hope of a propitious opportunity arising for their clandestine reembarkation.

This fact, as well as other news which has reached the President respecting the disturbing influence which some of the refugee Venezuelans in Trinidad try to exercise over the eastern coast of the Republic (an influence lately extended to the press of Port of Spain, in which the Venezuelan Government is ceaselessly insulted), gives rise to the suspicion that an attempt may be made to reproduce a disturbance amongst the Venezuelan people living near the colony similar to that which the Government had to suppress a short time ago with sacrifice of blood and interests, and to which my predecessor referred in his note sent to your excellency on the 7th of last October.

The obligation under which the executive power finds itself of preventing by all legitimate means whatever is designed to damage the national interests, urges me now, in compliance with special instructions from the President, to very earnestly request your excellency's mediation in obtaining from the colonial authorities within the shortest time possible the measures which may tend to prevent these arms leaving the island of Tobago; on the news of which the Government will ever view this action as a proof of the friendly desires of the honorable British authority in making effective the principles of good neighborliness, in the observance of which the results of reciprocal benefit to the Republic and to the colony must be looked for.

In thanking your excellency in advance for your mediation in this matter, I must declare to your excellency that the Government would doubly estimate the celerity with which this action is taken since its object is to prevent the perpetration of injuries to Venezuela of a grave nature and of widespread effect.

Accept, etc.,

J. R. PACHANO.

[Inclosure 2.]

*Mr. Haggard to General Pachano.*

CARACAS, November 22, 1901.

M. LE MINISTRE: I have the honor to acknowledge the receipt of your excellency's note of yesterday's date, in which you do me the honor of requesting. In compliance with special instructions from the President, my mediation in causing the colonial authorities of the island of Trinidad to take the necessary measures, as soon as possible, to prevent the export of certain arms from the island of Tobago, which, as your excellency surmises, are possibly to be used to produce a disturbance among the Venezuelan people.

I did not fail, at the earliest opportunity, to forward your excellency's wish to the governor of Trinidad, who will doubtless give it his most careful consideration.

But as I in my note of the 4th ultimo informed Doctor Blanco, your excellency will realize that this matter is one essentially of internal administration, and that the questions involved in it can only be dealt with by the governor of the colony.

Your excellency will forgive me again reminding the Venezuelan Government that the same considerations may present themselves to the governor of Trinidad, on the receipt of this renewed request to forbid the export of arms, as those which I suggested as possible in my previous note, and he may think that the very suggestion of reciprocity between Venezuela and Trinidad which your excellency makes conveys that you are of opinion that international conduct can not be all one sided, and, in fact, that a State which wishes for reciprocal neighborliness must be ready to give as well as desirous to take; and he may then remember that twenty years ago the Venezuelan Government levied an invidious tax on Trinidad which was not only vexatious and illegal, but practically avowedly of a penal and retaliatory character; that, though for many years past—from its inception, indeed—the circumstances which induced this retaliation have long since passed away, successive Venezuelan Governments have continued to levy this tax, thereby indorsing the injurious intention toward that colony of its original imposition, and that this they have done notwithstanding the constant protests of His Majesty's Government, notwithstanding the fact that they were aware of the injuries that they were thus gratuitously inflicting on their friendly neighbor, and even notwithstanding the fact that in so doing they were injuring their own integral interests; and he may then ask: What is the nature of the reciprocity which is due from Trinidad to Venezuela?

Sir Alfred Moloney may also remember that the proposal has passed completely unnoticed which I had the honor of communicating from his excellency to the President of the Republic in the month of April last, that, notwithstanding those injuries, he was ready, if the Venezuelan Government would in a friendly manner repeal this tax, to yield a point and meet his excellency halfway by prohibiting completely the importation of arms into the colony, a measure which, though detrimental to its commercial interests, would at least avoid the loss caused by the uncertainty of the constant and spasmodic changes made at the request of the Venezuelan Government, now to prohibit, now to allow, now again to prohibit the export of arms. He may finally even not forget that when I had the honor of reminding your excellency's predecessor, Doctor Blanco, that Dr. Andueza Palacio, when minister for foreign affairs, had informed me not only that the matter of the abrogation of the tax should be submitted to the next Congress and should receive the full support of the Government, but that I could repeat to His Majesty's principal secretary of

state for foreign affairs the formal assurance of the Venezuelan Government that the tax should be done away with—a definite pledge which I had forwarded to His Majesty's Government—his excellency first of all informed me that there was no official record whatsoever of this statement, and subsequently repudiated the pledge of his predecessor because it was not in writing; and Sir Alfred Moloney may therefore think that, from the point of view of reciprocity which your excellency suggests as advisable, it may be better to wait and see what is the decision of the Congress—to which body the question is to be submitted—before he takes measures to further impede the trade of Trinidad in deference to the wishes of the Venezuelan Government.

L avall, etc.,

W. H. D. HAGGARD.

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[Telegram.]

*Mr Haggard to the Marquess of Lansdowne—(Received January 1).*

No. 41.]

CARACAS, December 31, 1902.

A proclamation has been published in the Official Gazette in which the *Ban Righ* is declared a pirate, and a reward of £2,000, besides the vessel herself and cargo as prize, is offered to ships of war, or private ships of all nationalities bearing letters of marque granted by the Venezuelan Government—unless ship's papers are produced, or a statement of ownership supported by evidence.

I have warned the Venezuelan Government unofficially that any infraction of international law with regard to the life and property of British subjects should be avoided.

It is contended by the minister for foreign affairs that international law is overruled by the Venezuelan law of piracy.

His Majesty's ship *Tribune* has arrived.

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*Mr. Haggard to the Marquess of Lansdowne—(Received January 4).*

No. 42.]

CARACAS, December 5, 1901.

In my dispatch of the 26th instant I had the honor of forwarding to your lordship a copy of a note from the Venezuelan Government, dated the 18th November, requesting my mediation with the governor of Trinidad in inducing his excellency to lay an embargo on some arms which had been landed at Tobago, which the Venezuelan Government suspected to be intended for Venezuela.

I lost no time in forwarding to the governor of Trinidad a copy of this communication in the letter of which I have the honor to inclose a copy.

Sir Alfred Moloney replied declining to follow the course suggested by the Venezuelan Government, and forwarded an opinion of the colonial attorney-general summing up the international law of the case on which he based his refusal. I have the honor to inclose a

copy of my note to the Venezuelan Government, embodying his excellency's views with those of the attorney-general.

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure 1.]

*Mr. Haggard to Governor Sir A. Moloney.*

CARACAS, November 20, 1901.

SIR: I have the honor to inform your excellency that the Venezuelan Government have just informed me that a few days ago a great quantity of rifles and cartridges were disembarked in the island of Tobago in a suspicious manner, suggesting that an attempt may be made to produce a disturbance with them in Venezuela.

The minister for foreign affairs has begged for my mediation with your excellency in this matter. To this I am replying that it is one entirely for the internal administration of the colony of Trinidad. He also begged me to communicate with your excellency immediately.

I will forward copies of the note and my reply by next mail.

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure 2.]

*Mr. Haggard to General Pachano.*

CARACAS, December 2, 1901.

M. LE MINISTRE: In my note to your excellency of the 22d ultimo I informed you that I had lost no time in forwarding to the governor of Trinidad the request of the Venezuelan Government that measures should be taken as soon as possible to prevent the export of certain arms from the island of Tobago, which, as your excellency surmised, were possibly to be used in an attempt to produce a disturbance among the Venezuelan people.

I have now received his excellency's reply, in which he states that this matter has been under his consideration, and that he has no knowledge or control over the purposes and direction of these arms, and that he has no information to lead him to suppose that they are going to be used as is alleged.

Neither can his excellency, he goes on to say, find any precedent whatever in favor of interference, nor is he prepared, in view of the condition of things prevailing in the Spanish Main, to accept the grave consequences of any such action against what he is given to understand is legitimate business.

His excellency further incloses a copy of an opinion by the attorney-general who says, in reply to an official inquiry on the subject, that he feels some little difficulty in advising on it, as the request is one entirely out of the range of international law, as there is no international obligation on any state to interfere to prevent the export of arms and ammunition to another, even when the state requiring interference is at actual warfare. The attorney-general goes on to say that the request quia timet, that a state should interfere to prevent its subjects dealing in lawful merchandise for fear that the merchandise may be purchased by people intending to create a disturbance, is a diplomatic document which has never before been issued by any civilized government; as a matter of fact, he adds, in every European war both belligerents have from time immemorial freely drawn their stores and munitions from the merchants of

neutral powers without any government having thought itself justified in addressing remonstrances to the neutral governments for not stopping the traffic. These things are "contraband of war," and if a state of war exists the belligerents are justified in seizing them. Exporters therefore export at their own risk; but no nation would submit to its trade being interfered with because some foreign belligerent feared that the supplies derived from it may possibly be shipped by some adventurous person to the ports of his enemy. Although cases have recently occurred in which some governments have chosen, for reasons of their own, at special times to prohibit their subjects from delivering certain articles, the attorney-general has never heard of such a thing being done at a time when no war existed, and merely on the suspicion that the supply might possibly be used to the detriment of some government at the time at peace, but which apprehended that thereafter it might be subject to disturbance.

I avail, etc.,

W. H. D. HAGGARD.

*Colonial office to foreign office—(Received January 10).*

No. 43.]

DOWNING STREET, *January 9, 1902.*

SIR: I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquis of Lansdowne, the accompanying copy of a dispatch from the governor of Trinidad, inclosing copies of reports by the collector of customs respecting the alleged cargo of arms and ammunition on board the sloop *Maria Teresa*.

I am, etc.,

C. P. LUCAS.

[Inclosure 1.—Extract.]

*Governor Sir A. Moloney to Mr. Chamberlain.*

GOVERNMENT HOUSE, *Trinidad, December 12, 1901.*

I have the honor to inclose a copy of a report by the collector of customs on the subject of the statements made by the Venezuelan authorities that the sloop *Maria Teresa* carried a cargo of arms and ammunition.

[Inclosure 2.]

*Report of the Collector of Customs.*

HONORABLE COLONIAL SECRETARY: The *Maria Teresa* was understood to have been the property of two brothers Wilson, of Carriacou, one of whom, D. Wilson, signed, as master, the clearance papers for the voyage in question. Her name and Venezuelan nationality were probably due to the requirements of the Venezuelan law as regards coasting traders.

The vessel cleared for Guirila on the 8th January with the following cargo: One-half barrel cigarettes, one-half cask wine, 1 case matches, 2 baskets oil, 1 case vermouth, 1 barrel flour, one-half firkin butter, 1 barrel malt liquor, 2 bags rice, and "sundry packages general merchandise."

This last item might mean anything or nothing, being merely a conventional description of articles which, not being goods from bond or for drawback, the revenue is not interested in, and which do not go into our statistics.

I have no reason to suppose that the *María Teresa* carried arms and ammunition. Indeed, though it is usual for vessels trading with Venezuela to have among their stores weapons for protection, and she might without arousing suspicion or criticism have had half a dozen rifles, I was struck by observing that she apparently had not even a revolver. Inquiry among the waterguard officers produced the explanation that the Wilsons were very civil, quiet people, on good terms with the officials and residents on the opposite (Venezuelan) coast, and that they had long been conspicuous among their class in not carrying arms.

R. H. MCCARTHY.

NOVEMBER 19, 1901.

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[Telegram.]

*The Marquess of Lansdowne to Consul Japp.*

No. 44.]

FOREIGN OFFICE, *January 10, 1902.*

It is reported that the steamer *Libertador*, formerly bearing the name *Ban Righ*, has sailed for Venezuela after having been fitted out at Martinique as a man-of-war.

While reporting fully by dispatch all information respecting vessel, you should at once telegraph whether she was flying the British flag, who was in command, and whether any British subjects were on board her.

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[Extract.]

*Mr. Haggard to the Marquess of Lansdowne—(Received January 11, 1902).*

No. 45.]

CARACAS, *November 20, 1901.*

The French telegraph line having been interrupted for several days, your lordship's telegram of the 15th instant did not reach me till the evening of the 18th, too late for any steps to be taken on it. I, however, wrote a note, of which I have the honor to inclose a copy, embodying your lordship's inquiry as to whether the Venezuelan Government held that a state of war existed or not between the Republics of Venezuela and Colombia.

This evening I received the note, of which I have the honor to inclose a translation, conveying that no state of war existed between Venezuela and Colombia.

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[Inclosure 1.]

*Mr. Haggard to General Pachano.*

CARACAS, *November 18, 1901.*

M. LE MINISTRE: I have received instructions by telegraph from His Majesty's Government to ascertain from the Venezuelan Government whether or no they hold that a state of war exists between this Republic and that of Colombia.



I have been directed to reply by telegraph to this inquiry, and as a telegram has taken three days on its way I shall be much obliged if your excellency would be good enough to reply to my inquiry at your earliest convenience, and thus enable me to forward with the least possible delay the information required by His Majesty's Government.

I avail, etc.,

W. H. D. HAGGARD.

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[Inclosure 2.—Translation.]

*General Pachano to Mr. Haggard.*

CARACAS, November 20, 1901.

M. LE MINISTRE: I have the honor to inform your excellency, in answer to your polite note of the 18th instant, that no state of war exists between Venezuela and Colombia, and that the situation continues in this respect subordinated to the circumstances expressed in the memorandum transmitted by this ministry to foreign governments on the 16th August last.<sup>a</sup>

Accept, etc.,

J. R. PACHANO.

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*Mr. Haggard to the Marquess of Lansdowne—(Received January 15, 1902).*

No. 46.]

CARACAS, December 25, 1901.

MY LORD: I have the honor to inclose a copy of the note embodying your lordship's telegram of the 16th instant, in which you instructed me to address a strong representation to the Venezuelan Government with reference to the renewed violation of British territory at the island of Patos by the Venezuelan gunboat *Totumo*.

I have also the honor to inclose a translation of the reply from the Venezuelan foreign office, which entirely ignores the protest and assumes that the strong remonstrance of His Majesty's Government is merely a request for investigation into the circumstances connected with the matter, an unsolicited investigation which they decline to institute with reference to the violation "in view of the fact that it is notorious that they consider Patos as their own legitimate possession."

However, with reference to the complaint against their treatment which they assume that the British subjects, Abraham Williams and Numa Audrey, "wished to present" to them, his excellency states that he will ask for information from three departments—that of war and marine, that of finance, and that of public credit.

As apart from other reasons, the questions whether the revolutionary intrigues or smuggling have nothing to do with the violation of territory, I therefore thought it advisable to address the further note

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<sup>a</sup> Circular communicated to foreign representatives at Caracas by Venezuelan Government containing a protest against the action of the Colombian Government.

to the Venezuelan Government, of which I have the honor to inclose a copy, pointing out that His Majesty's Government had asked for no such investigation, and that my note had conveyed no such request on their part, but that I had confined myself therein to stating that the action of the Venezuelan gunboat *Totumo* had constituted a renewed violation of British territory, and to conveying to his excellency the strong remonstrance of His Majesty's Government against any infringement of the sovereign rights of Great Britain at the island of Patos.

I have, etc.,

W. H. D. HAGGARD.

P. S.—DECEMBER 27.—I have also the honor to inclose a translation of the rejoinder to my above-mentioned note, and a copy of my reply thereto.

W. H. D. H.

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[Inclosure 1.]

*Mr. Haggard to General Pachano.*

CARACAS, December 17, 1901.

M. LE MINISTRE: I have been directed by the Marquis of Lansdowne, His Majesty's principal secretary of state for foreign affairs, to lay the following circumstances before your excellency.

A Venezuelan ship called the *Pastor* left Port of Spain on or about the 20th of last August with a cargo of goods and three passengers. She appears to have been under the orders of a Venezuelan named Euphemio Bompart, the navigating captain being a British subject named Abraham Williams. At least one of the passengers also, a man named Numa Audrey, was a British subject.

The *Pastor* proceeded to the British island of Patos, and some of the goods she contained were landed there on the next day.

A Venezuelan gunboat, the *Totumo*, then appeared and boarded the *Pastor* with armed men whilst still at the island. These examined her papers and cargo. Some of the crew of the *Totumo* were then landed on the island, where they seized and carried on board the gunboat the goods there deposited. They further took some men prisoners—all this on British soil. The *Totumo* subsequently fired on the *Pastor* whilst still in British territorial waters.

In view of the discourteous action of the Venezuelan gunboat *Totumo* in landing a party on the island of Patos and there seizing goods put ashore by the *Pastor*, which constituted a renewed violation of British territory, and in further firing on that vessel whilst in British territorial waters, I have received instructions from His Majesty's Government, by telegraph, to address a strong remonstrance to the Venezuelan Government against any infringement of the sovereign rights of Great Britain in that island.

I avail, etc.,

W. H. D. HAGGARD.

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[Inclosure 2.—Translation.]

*General Pachano to Mr. Haggard.*

CARACAS, December 20, 1901.

M. LE MINISTRE: In answering your excellency's note of the 17th instant I have the honor to inform you that in the matter of the Venezuelan ship *Pastor*,

to which it referred, the investigation of the Government will not be able to be made with reference to violation of territory, since if, as appears from the facts transmitted to your excellency, the event occurred in waters of the island of Patos or within its boundaries, it must be considered in connection with the notorious circumstance that Venezuela considers the island in question as its legitimate possession.

With respect to the complaint which the British subjects Abraham Williams and Numa Audrey have wished to put forward as to the action taken on the ship of whose crew the former was a member, this ministry will ask information on the matter from the department of war and marine, as well as from that of finance and of public credit, for this may be a question of an act due to information received as to revolutionary plans on the coast, or of its having been chased on account of strong evidence pointing to the fact that the ship was engaged in the smuggling trade.

I avail, etc.,

J. R. PACHANO.

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*Foreign office to colonial office.*

No. 47.]

FOREIGN OFFICE, *January 21, 1902.*

SIR: I am directed by the Marquis of Lansdowne to acknowledge the receipt of your letter of the 9th instant, forwarding a copy of a dispatch from the governor of Trinidad respecting the allegation that the sloop *Maria Teresa*, burnt by a Venezuelan gunboat off Guiria, was carrying arms and ammunition at the time.

I am to state that a copy of your letter will be sent to His Majesty's minister at Caracas, but that Lord Lansdowne does not propose to give him, at any rate for the present, further instructions.

I am, etc.,

F. H. VILLIERS.

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[Telegram.]

*The Marquess of Lansdowne to Mr. Haggard.*

No. 48.]

FOREIGN OFFICE, *January 23, 1902.*

You should inform Venezuelan Government that *Ban Righ* left this country in November. There was no reason for detaining her as no state of war existed between Colombia and any other power, and the Colombian minister stated that she was intended for the service of his Government.

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*Colonial office to foreign office—(Received January 27).*

No. 49.]

DOWNING STREET, *January 25, 1902.*

SIR: I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquis of Lansdowne, the accompanying copy of a dispatch, forwarding correspondence on the subject of the

seizure and detention by the Venezuelan authorities of a colonial British owned and British registered sloop, the *Indiana*, in the waters of the Barima River in Venezuelan territory, which is open to free navigation under the award of the 3d October, 1899.

I am, etc.,

C. P. LUCAS.

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[Inclosure 1.]

*Governor Sir J. A. Swettenham to Mr. Chamberlain.*

GOVERNMENT HOUSE,

*Georgetown, Demerara, December 31, 1901.*

SIR: I have the honor to forward for your information the inclosed papers on the subject of the seizure and detention by the Venezuelan authorities of a colonial British-owned and British-registered sloop named the *Indiana* in the waters of the Barima River, in Venezuelan territory, but where the ships of all nations enjoy the privilege of free navigation under the award of the 3d October, 1899.

I inclose copy of a letter which I have written to His Britannic Majesty's chargé d'affaires in Venezuela on the subject, asking him to apply for the release of the vessel.

I have, etc.,

J. A. SWETTENHAM.

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[Inclosure 2.]

*Acting Government medical officer, northwestern district, to Government secretary.*

DECEMBER 21, 1901.

SIR: I have the honor to inform you that it was reported to me by the owner, Antonio Consalves Jardine, a British subject, that on Monday evening the 16th instant his sloop *Indiana*, anchored midstream on the Barima, beyond the boundary line, was seized and the whole crew arrested by Venezuelan officials.

I have, since the information given by the owner, seen the captain of the sloop, who made his escape, and he confirmed the above.

Names of crew: Nathaniel Roberts, captain; James Nixon, Charlie—all British subjects.

I have, etc.,

FRED. S. WILLS.

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[Inclosure 3.]

*Acting Government medical officer, northwestern district, to Government secretary.*

DECEMBER 28, 1901.

SIR: I have the honor to acknowledge receipt of your letter of the 23d instant.

On the arrival of the stipendiary magistrate I reported the matter to him, and he took sworn statements from the owner (Antonio Jardine) and the captain (Nathaniel Roberts), who made his escape.

I have read the statements and are same as have been reported to me.

The stipendiary magistrate informed me that the sworn detailed statements would be sent to you for his excellency's information by steamer leaving to-day.

The owner and the captain expect leaving here to-day for Georgetown; the others of the crew have not yet returned, and I believe are still in custody.

I have, etc.,

FRED. S. WILLS.

[Inclosure 4.]

*Acting Government agent, northwestern district, to Government secretary.*

DECEMBER 27, 1901.

SIR: I have the honor to forward, for the information of his excellency the governor, two sworn statements taken from the owner and captain of the sloop *Indiana*, relative to her seizure by the Venezuelans whilst at anchor in mid-stream in the Barima River and to ask for his excellency's instructions in the matter. The owner of the sloop, Jardine, informs me that on the day he saw the Venezuelan governor the two boys, viz, Charlie and Joesph Dixon, were still on the sloop, but whether they have been put in prison since he has not heard.

As the Indian girl, on whom it is alleged by the captain of the sloop that a rape had been committed, is apparently a British subject, I have instructed the police to make most careful inquiries in the matter, and will report further the result.

Mr. McTurk interviewed both the owner and captain of the sloop in my presence on the morning of the 25th instant.

Both the owner, Antonio Gonsalves Jardine, and the captain, Nathaniel Roberts, leave for Georgetown by the steamer to-morrow, and I have instructed them to report themselves at 10 a. m. on Monday at your office in case you wish to see them.

I have, etc.,

ARTHUR CHOPPIN,  
*Stipendiary Magistrate.*

[Inclosure 5.]

*Statement by Antonio Gonsalves Jardine.*

ANTONIO GONSALVES JARDINE, sworn, states:

I live at Lot No. 8, Coomacka street, Georgetown, and am the owner of the sloop *Indiana*. About midday on the 17th December, 1901, one Caesar brought me the information that my sloop, the *Indiana*, had been seized by the Venezuelans. I immediately left in a corial for the place where the sloop had been seized, and arrived at Amakura on the morning of the 19th instant. I at once went on shore to see the governor, who told me that I might take charge of the sloop that day, but his secretary, who was present during my interview, told me "No," because he saw contraband taken ashore, and that if anything came of his refusal to release the sloop he would be responsible for it. The governor then told me that he was going to write to the Government of Bolivar for instructions in the matter.

ANTONIO (his x mark) GONSALVES JARDINE.

DECEMBER 27, 1901.

Witnesses:

ARTHUR CHOPPIN,  
*Stipendiary Magistrate.*

THOMAS NARAIN,  
*Clerk of Court.*

Taken and sworn before me this 27th day of December, 1901.

ARTHUR CHOPPIN,  
*Stipendiary Magistrate, N. W. J. D.*

[Inclosure 6.]

*Statement by Nathaniel Roberts.*

NATHANIEL ROBERTS, sworn, states:

I am the captain of the sloop *Indiana*, which is owned by Antonio Gonsalves Jardine, of lot 8, Coomacka street, Georgetown. On the 14th December, 1901, about 8 a. m., I left Morawhanna in the sloop *Indiana* for Venezuela, and sailed down the Barima River, having on board as crew an Indian boy named Charlie and a black boy named Joseph Nixon. I had not any cargo on board, but only 173 empty flour barrels, which are used to convey corn to the market at Georgetown. I landed 50 of these at Jaipaul's grant, which is in British territory, the same afternoon. I arrived at the boundary on Monday, the 16th instant, about 9 a. m., and landed 56 empty barrels in a bateau at Edward Leung's grant, which is in Venezuelan territory. I then proceeded lower down the river to Edward Harry's grant, and there landed 27 empty barrels in the same bateau. I then anchored in midstream and sent the bateau with 30 more empty barrels to George Anthony's grant, which is about 200 rods farther down the river from my anchorage, and the balance of 10 empty barrels to John Correia, who sent his bateau out to the sloop for them. This was about 2 p. m. About 5.30 p. m. the same day I saw the Venezuelan general's boat coming down toward the sloop. The general, or some one in authority—as I do not know who he is—came on board with a black man, who carried a rifle, apparently a soldier (this boat had been made fast to the stern of the sloop meanwhile, and the then armed Venezuelans who were in it then came on board). He told the black soldier to ask me if I had landed any cargo. I replied that I had not landed any cargo, but some empty barrels.

The general then spoke to the black soldier in Spanish, who then ordered me to heave up the anchor. I asked why, as I had not landed my cargo. The black soldier then said that if I did not heave it up he would shoot me. While we were heaving up the anchor Edward Harry, who is a cousin of mine, came on board to find out what was wrong. The black soldier again spoke to the general in Spanish and told Harry that he was to give a hand to heave up the anchor. Harry said he would not, as he was not working on board the sloop. The black soldier then "chucked" him until he got him near the dodge house (a small place where the crew shelter when the weather is very bad), then beat him with the butt of his rifle. After this Harry went to the general and told him he was a grant holder, so he let him go. About 7 p. m. we drifted down the river on our way to Amakura. Next morning, soon after daylight, the general and the then armed men—Venezuelans—went ashore to Ignacio's grant. During their absence an Indian man and two women were coming up the river in a corial. The black soldier, who was left in charge of the sloop, called out to them to come alongside, but as they did not want to do so he pointed his rifle at them (this rifle has a magazine holding about 16 ball cartridges); they then came alongside. He had the corial searched and found a grass hammock. He took the hammock and ordered them away, but as the Indian did not want to leave without the hammock he again pointed his rifle at him. The Indian then let go and went away. Just after this another corial was coming up, having an Indian man and a young Indian girl, about 16 years old, and her baby in it. The black soldier called out to them to come alongside, but as they would not he pointed his rifle at them, and they came. He had the corial searched, but only found some grass that is used to make hammocks. The black soldier then ordered me to go and hold the corial and not to let the man come out of it.

He then turned to the Indian boy Charlie and ordered him to bring the girl on board. He did so. He then ordered him to take her down below, taking



his rifle with him, which he always carried in his hand, and sent Charlie up on deck. The black soldier then commenced to wrestle with the girl, who called out for help in her own language. On hearing this I loosed the (husband) Indian, but neither of us dared go to her assistance, as we were afraid that he would shoot us. I actually saw the black soldier have connection with the Indian girl. After this the black soldier ordered the Indian to come out of the corial, and, as he would not, he dragged him out. He then ordered the girl in the corial, gave the husband five blows across his shoulders and back with the butt of the rifle. The Indian then jumped into the corial and pulled away, the soldier telling him to go "deep into the bush, and don't make him see him close to the river corner again," else he would shoot him. When the corial was a little way off he fired one shot at it, and told us that we must not tell the general anything, even if he asked us. If we did, and he heard of it, he would shoot us; so we did not say anything to the general when he returned. I do not know whether the Indian girl lives in the British or Venezuelan territory, but the husband told me that they were going to the Aruka. I have since heard that the girl is the daughter of one Gopee, by an Indian woman, who resides in British territory. That night, while the black soldier was keeping sentry, I managed to escape in their corial, and arrived at Morawhanna about 5 p. m. on the 18th instant. Previous to this trip I have made five other trips to Venezuela in the *Indiana*, and have acted in the same manner as on the present occasion, and never have experienced any difficulty, and can only account for it on this occasion because there is a new general stationed in this part of Venezuela since my last trip.

NATHANIEL (his x mark) ROBERTS.

DECEMBER 27, 1901.

Witnesses to mark:

ARTHUR CHOPPIN,  
*Stipendiary Magistrate.*

THOMAS NABAIN,  
*Clerk of Court.*

Taken and sworn before me this 27th day of December, 1901.

ARTHUR CHOPPIN,  
*Stipendiary Magistrate, N. W. J. D.*

[Inclosure 7.]

*Acting Government agent, northwestern district, to the Government Secretary.*

DECEMBER 28, 1901.

SIR: In continuation of my letter of yesterday's date, I have the honor to forward a statement from Sergeant of Police No. 636 Murray, from which it will be seen that the man Gopee states that both his daughter Maria and her reputed husband left his grant in the Barima River for Moruca in the early part of November last, and have not returned; consequently, I do not think that she can be the same girl as the captain of the sloop mentions in his statement, as the Moruca River is about 5 miles from the mouth of the Pomeroon River, and the occurrence in question, it is stated, took place opposite Ignacio's grant, which is about 24 miles from the mouth of the Barima River, and is in a totally different direction.

The police are still making inquiries, and I hope to be able to furnish more definite information in connection with the alleged outrage on the young Indian girl by next steamer.

I have, etc.,

ARTHUR CHOPPIN.

[Inclosure 8.]

*Sergeant Murray to Acting Government agent, northwestern district.*

MORAWHANNA POLICE STATION, NORTHWESTERN DISTRICT,

December 27, 1901.

SIR: I have the honor to report, for your information, that, in compliance to instructions received from you, I sent Police Constable 1502 Walcott, in charge of police bateau, to the grant of Gopee, who came to the Morawhanna police station, where I questioned him on the subject of his daughter being raped by a Spanish soldier, or police, on board the sloop *Indiana*, as reported by Captain Roberts; and, according to the inquiry which I made, Gopee is altogether ignorant of such an incident occurring to his daughter Maria, who (as he informed me) left for Moruca about the first week in November last with her reputed husband, and has not returned.

I have, etc.,

SERGEANT 636, A. MURRAY.

[Inclosure 9.]

*Governor Sir J. Swettenham to Mr. Haggard.*

GOVERNMENT HOUSE,

Georgetown, Demerara, December 31, 1901.

SIR: I have the honor to forward, for your information, copy of the papers marginally noted on the subject of the seizure and detention by the Venezuelan customs authorities of a colonial British-owned and British-registered sloop named the *Indiana* in the waters of the Barima River, within Venezuelan territory, which has been declared to be open in time of peace to navigation by the merchant ships of all nations, subject to all just regulations and to the payment of light and other like dues, \* \* \* provided that no customs duties shall be chargeable either by the Republic of Venezuela or by the colony in respect of goods carried on board ships, vessels, or boats passing along the said river, but customs duties shall only be chargeable in respect of goods landed in the territory of Venezuela or Great Britain, respectively. (Arbitrator's Award of the 3d October, 1899.)

I request that you will be good enough to ascertain from the Venezuelan Government the grounds on which the *Indiana* has been seized and detained, and that you will (if you think the circumstances justify such a step) represent to that Government that the confiscation of the vessel is an excessively severe penalty for any infraction of customs laws of which the ship's company may have been deemed guilty, and apply for the release of the vessel.

The papers also contain certain charges against the Venezuelan officer placed on board the vessel, but until we receive more definite information as to the nationality of the Indian woman alleged to have been outraged it might be well to defer making representation of these charges.

I have, etc.,

J. A. SWETTENHAM.

*The Marquess of Lansdowne to Mr. Haggard.*

No. 50.]

FOREIGN OFFICE, January 31, 1902.

SIR: A letter has been received from the colonial office, forwarding a dispatch from the governor of British Guiana, in which he incloses

some correspondence on the subject of the seizure and detention by the Venezuelan authorities of a colonial British sloop, the *Indiana*, in the waters of the Barima River, which are open to free navigation under the award of the 3d October, 1899. Sir A. Swettenham states that he has also communicated this correspondence to His Majesty's legation at Caracas, with a request that the grounds may be ascertained on which the *Indiana* has been seized and detained, and application made for her release, should the circumstances of the case appear to justify this step.

I should wish you to report whether you have made any representation to the Venezuelan Government in this sense, and, if so, with what result?

I am, etc.,

LANSDOWNE.

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[Extract.]

*Mr. Haggard to the Marquess of Lansdowne—(Received February 5, 1902).*

No. 51.]

CARACAS, December 31, 1901.

The decree from the Official Gazette, of which I have the honor to inclose a translation, proclaims as a pirate the ship called the *Barrigh* (*Ban Righ*), which has apparently had its name changed to *Libertador*.

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[Inclosure.—Translation.]

*Extract from Official Gazette of December 30, 1901.*

The Provisional President of the United States of Venezuela, considering:

That exiled Venezuelans living in the West Indies have unceasingly conspired against the peace of Venezuela, and have even armed a steamer for war, as is proved by the allocution of Gen. M. A. Matos, given on board the said steamer;

That as the said steamer is not licensed by any nation it has no authority to navigate; and

That it is necessary to preserve national and foreign commerce from the great dangers which the like piracy may bring on it, decrees:

ARTICLE 1. The steamer, formerly the *Barrigh*,<sup>a</sup> and now called the *Libertador* by the revolutionists who have sailed in her, under command of Gen. M. A. Matos, for the Venezuelan coasts, shall be considered and chastised as a pirate ship.

ART. 2. The said steamer may therefore be pursued and captured by public or private ships armed as privateers, whether belonging to Venezuela or to any other nation.

ART. 3. In case the enterprise should be executed by foreign public ships, or by privateers, the Government of Venezuela will not make any claim to the capture, but everything taken shall belong to the capturers, and, furthermore, a reward of 50,000 bolivars shall be paid to them from the public treasury.

ART. 4. Nationals and foreigners who, by virtue of the decree, desire to arm

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<sup>a</sup> *Ban Righ*.

privateers, shall solicit them from the Government of the Republic in conformity with the ordinance with respect to privateering now in force.

ART. 5. The capture shall be judged before the proper tribunals and according to the laws of the Republic, taking into consideration the provisions of this decree.

ART. 6. The ministers of war and marine, foreign affairs and finance, and public credit are charged with the execution of this decree and to communicate it to all concerned.

Given, signed, sealed with the seal of the national executive, and countersigned by the ministers of war and marine, foreign affairs and finance, and public credit at the Federal Palace in Caracas the 30th day of December, 1901 (year 91 of the independence and 43 of the federation).

CIPRIANO CASTRO.

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*Colonial office to foreign office—(Received February 7).*

No. 52.]

DOWNING STREET, *February 7, 1902.*

SIR: With reference to the letter from this department of the 25th ultimo, I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquis of Lansdowne, the accompanying copy of a further dispatch from the governor of British Guiana, with inclosures, relative to an alleged outrage on an Indian woman by a Venezuelan soldier.

I am, etc.,

C. P. LUCAS.

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[Inclosure 1.]

*Governor Sir J. Swettenham to Mr. Chamberlain.*

GOVERNMENT HOUSE, GEORGETOWN, DEMERARA,

*January 15, 1902.*

SIR: In continuation of my dispatch of the 31st ultimo, I have the honor to transmit herewith, for your information, a copy of a further letter and its inclosures, which I have addressed to His Majesty's minister at Caracas, with regard to the alleged outrage on the Indian woman referred to in the papers forwarded therewith.

I have, etc.,

J. A. SWETTENHAM.

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[Inclosure 2.]

*Governor Sir J. Swettenham to Mr. Haggard.*

GOVERNMENT HOUSE, GEORGETOWN, DEMERARA,

*January 15, 1902.*

SIR: In continuation of my letter of the 31st ultimo, I have the honor to acquaint you that from information subsequently received it appeared that the Venezuelan authorities who seized the sloop *Indiana* had abandoned her and that certain other persons had taken possession of her. I thereupon inquired by telegram whether the Trinidad government was in possession of any information respecting the sloop, to which Sir Alfred Moloney replied in the negative, but adding that he would forward my message to you.

2. With reference to the last paragraph of my letter, I have the honor to transmit herewith copies of further statements which have been obtained with reference to the alleged outrage on the Indian woman, and of a letter from the acting Government agent of the northwestern district with regard to the alleged trial of the Venezuelan soldier who is said to have committed the offense.

I have, etc.,

J. A. SWETTENHAM.

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[Inclosure 3.]

*Statement by Stanislaus.*

About a fortnight ago I was returning to the Aruku, where I live, when I saw a big boat in the Barima River, a good distance from Morawhanna, on the Venezuelan side. I had been to get some Eta palm from the Barima mouth, as it does not grow on the English side. My keeper, Maria, and a little girl were in the corial with me. A black soldier on the big boat beckoned to me to come alongside, and pointed the gun at us, so I came. He searched the corial, but only found clothes and Eta palm. The black soldier then ordered Maria to go on board the big boat, which she did. He then ordered an Indian boy who was on board to take Maria down below the deck, which he did. Then the black soldier followed Maria and ordered the Indian boy to go on deck. I then heard Maria "hollering" for help, but I did not go, as I was afraid that he would shoot me. I was standing up in the corial, which was alongside the big boat, and Captain Roberts was in the small boat near to me. When Maria came on deck she appeared to be very frightened, and had her dress torn at the back. The black soldier then ordered Maria to get into the corial, and ordered me to get on board the big boat. He then commenced to juke me with the butt end of the gun, twice in the back and once in the chest, and told me to get into the corial and go away. As we were paddling away the Indian boy interpreted what the black soldier called out to us, viz, that we must go into the bush and not let him see us again. He then fired a "load" at us when we were not very far off.

After we had paddled some distance from the big boat Maria told me that the black soldier had had connection with her against her will. I did not report this at the police station, as I was very much afraid and can not speak the English language. The black soldier is a big, stout man. Besides the black soldier there were two black men and an Indian boy on the big boat.

STANISLAUS (his x mark).

Witnesses:

THOMAS NARAIN, *Clerk of Court.*

ALBERT MURRAY, *Sergeant 636.*

Stanislaus: Evidence of.

Taken and sworn before me this 30th December, 1901.

ARTHUR CHOPPIN,  
*Stipendiary Magistrate, N. W. J. D.*

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[Inclosure 4.]

*Statement by Johannah.*

I am a Warow Indian, am the mother of Maria Elizabeth, and live in the Aruka. About two weeks ago my daughter Maria told me that when she was returning with Stanislaus from the Barima mouth that a black Venezuelan soldier had called them alongside a big boat in the Barima River and had taken

her down below and had had connection with her against her will, and that she had cried very much. She showed me her dress where the soldier had torn it at the back. My daughter has lived all her life in the Aruka.

(Signed) JOHANNAH (her x mark).

Witnesses:

THOMAS NARAIN, *Clerk of Court.*

ALBERT MURRAY, *Sergeant 636.*

Taken and sworn before me this 30th day of December, 1901.

ARTHUR CHOPPIN,  
*Stipendiary Magistrate, N. W. J. D.*

[Inclosure 5.]

*Statement by Maria Elizabeth.*

I am a Warow Indian and live in the Aruka with my mother, Johannah, also a Warow Indian, and a man named Stanislaus, also a Warow. I was born at Aruka. Alloysius Patrick Ignatius Chan sworn as an interpreter for the Warow language.

About two weeks ago I was returning to my home in the Aruka with my reputed husband Stanislaus in a corial with my dead sister's little child. We had been down to the Barima mouth to gather Eta palm to shred, so as to make hammocks, as we can not get it over the English side. When passing a big boat in the Barima River, a good way off from Morawhanna, in Venezuelan territory, the black soldier on board of the big boat called out to us and beckoned to us to come alongside, which we did. This was about midday. The black soldier told me to take everything I had out of my tin canister. I did so and showed him. He then came and searched my things. There were only some clothes and Eta palm in it. After this the black soldier told me to come on board. I did so.

There was an Indian boy on board, who interpreted all that the black soldier said to me and showed me where I was to go, telling me that if I did not go below that the black soldier would shoot me. I went below with the Indian boy, and when the black soldier came down he sent him up on deck. The black soldier then caught hold of me. I struggled with him and called out for help. He then threw me down onto the place where one sleeps in the cabin. He lifted up my dress and had connection with me against my will, as I was struggling all the time. He then told me to go up on deck and get into the corial. I did so, as I was very frightened at the time, as he had squeezed me and hurt me very much. He did not give me any money or any present. After I got into the corial the black soldier ordered Stanislaus to get on deck, and when he got there he beat him with the stock of the gun and gave him three blows on his chest and back. He then told him to go away. After we left the big boat the black soldier fired a shot at us, when we were about 20 yards away, and called out and said that we must go into the bush and not let him see us again. I did not report this to the police when I arrived at Morawhanna, as I could not speak English, but when I arrived home at the Aruka I told my mother, Johannah, what had happened.

MARIA ELIZABETH (her X mark).

Witnesses:

THOMAS NARAIN, *Clerk of Court.*

ALBERT MURRAY, *Sergeant 636.*

Taken and sworn before me this 30th day of December, 1901.

ARTHUR CHOPPIN,  
*Stipendiary Magistrate, N. W. J. D.*



When the black soldier called us to come alongside the big boat he pointed the gun at us and said he would fire if we did not come. After we left the big boat I told Stanislaus all that the black soldier had done to me when in the cabin.

MARIA ELIZABETH (her X mark).

Witnesses:

THOMAS NARAIN, *Clerk of Court.*

ALBERT MURRAY, *Sergeant 636.*

Taken and sworn before me this 30th day of December, 1901.

ARTHUR CHOPPIN,  
*Stipendiary Magistrate, N. W. J. D.*

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[Inclosure 6.]

*Acting Government agent, northwestern district, to Government secretary.*

JANUARY 6, 1902.

SIR: On Saturday evening, the 4th instant, after the steamer had left, the Rev. Father Gillet informed me that a Venezuelan named Louis Flores had been to him during last week, and had shown him apparently an official document, purporting to be the minutes of the trial of the black Venezuelan soldier who, it is alleged, had committed an outrage on the Indian girl, Maria Elizabeth, and that he had been tried by the Venezuelans, and that, apparently on account of the evidence of the witnesses, one of whom was a native of Demerara, a Protestant, who swore "by his God" that the soldier only took a fish (a maracot), and another, a Roman Catholic, who denied that any outrage had been committed; he, the Venezuelan soldier, has since disappeared from the district.

2. This Venezuelan also informed the father that he had actually acted as interpreter in the case in question; also that a sail had been picked up by the Venezuelans, which, it is thought, belonged to the sloop *Indiana*, recently seized by them, as the sloop had been ordered from Amakuru to Bolivar. Whether the sloop has been wrecked or not I can not ascertain, but I will report further any information I may be able to obtain.

I have, etc.,

ARTHUR CHOPPIN.

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*Acting Consul Hudson to the Marquess of Lansdowne—(Received February 8).*

[Telegram.]

No. 53.]

PANAMA, *February 7, 1902.*

The steamship *Ban Righ* is reported by *Psyche*, which returned to Colon on the 6th instant, to have left for Carthagena, and probably for Venezuela.

The owner of the vessel at time of her leaving England, De Paula, came in her as far as Carthagena, and is now returning to England as a passenger on board the *Atrato*.

He informed me that the sale to Colombia of title to the vessel was completed on the 1st January at Martinique, where English crew were dismissed. As the vessel was not transferred until the 2d

January, when she was at sea, by a bill of sale from De Paula to Matos, executed under Colombian instructions, the Colombian ensign was never hoisted at Martinique.

The transfer was notified in writing by De Paula from Savanilla to the registrar of shipping at Aberdeen.

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*The Marquess of Lansdowne to Acting Consul Hudson.*

[Telegram.]

No. 54.]

FOREIGN OFFICE, *February 8, 1902.*

With reference to your telegram of the 7th instant, you should report whether De Paula transferred the steamship *Ban Righ* to the Colombian Government or to a Colombian citizen at Martinique on the 1st January, and if to a Colombian citizen you should report his name.

If such transfer took place, do you understand that the second transfer was made with the knowledge or by the order of the Colombian Government? And can you explain how De Paula could give a bill of sale to Matos on the 2d January after having parted with the property in the vessel on the 1st January?

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*Acting Consul Hudson to the Marquess of Lansdowne—(Received February 11).*

[Telegram.]

No. 55.]

PANAMA, *February 11, 1902.*

With reference to the inquiries contained in your telegram of the 8th instant, I have to report that according to statement of De Paula, he purchased the *Ban Righ* as the agent of the Colombian Government, and was instructed by them, after the purchase had been completed at Martinique, to transfer the vessel to General Matos.

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*Mr. Haggard to the Marquess of Lansdowne—(Received February 14).*

[Extract.]

No. 56.]

CARACAS, *January 24, 1902.*

I received your lordship's telegram \* of yesterday evening, and this morning called upon the minister for foreign affairs and read it to his excellency, who said that it did not make any difference in the position; that because the *Ban Righ* had sailed originally from an English port, had flown the British flag, and been provided with English papers, therefore England was responsible for her whole

subsequent career. He added that the declaration of the Colombian minister that she was intended for the service of his Government was merely a "side issue." He clearly conveyed, in fact, though in polite words, that it was simply begging the question to say that there was not any reason to detain the vessel because the Colombian minister had stated that she was intended for the service of his Government, and no state of war existed between Colombia and any other power. He repeated that a pirate she was, and that we were entirely responsible for her actions; that as revolutionaries on land were only bandits, so she was a pirate at sea.

I asked his excellency what acts of hostility the *Ban Righ* had as yet committed against Venezuela. He replied that she had landed arms. This may be the case, but I have at least not yet succeeded in getting any real confirmation of this statement, any more than I have of many other rumors of the movements of the ship of late on the Venezuelan coast, when, as would seem probable, she has gone off to Colombia.

I did my best to persuade his excellency of the untenability of the position taken up by his Government, though without, I fear, any success.

I have the honor to inclose a copy of the note which I have sent to his excellency recording my having conveyed to him verbally the information contained in your lordship's telegram.

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[Inclosure.]

*Mr. Haggard to General Pachano.*

CARACAS, January 24, 1902.

**M. LE MINISTRE:** AS I had the honor of informing your excellency verbally this morning, I have been instructed by His Majesty's Government to state to you, with reference to a conversation which I had on the 21st instant with your excellency, which I reported to the Marquis of Lansdowne, that the *Ban Righ* left England in November, and that the Colombian minister in London having stated that she was intended for the service of his Government, and no state of war existing between Colombia and any other power, there was not any reason to retain the vessel.

I avail, etc.,

W. H. D. HAGGARD.

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*Mr. Haggard to the Marquess of Lansdowne—(Received February 14).*

[Extract.]

No. 57.]

CARACAS, January 25, 1902.

I have the honor to inclose further correspondence on the subject of the *Ban Righ*.

The first of these letters is one from the minister of foreign affairs, in which he represents me as having stated that the *Ban Righ* was

dispatched from British ports. This is a misstatement, as I have shown in my reply to General Pachano. On it, however, later on in the note, is founded a "solemn protest of the Venezuelan Government against the unusual fact of the equipping in and the dispatching from British ports a ship with the intention of injuring Venezuelan commerce and of disturbing by piratical operations the tranquillity of the Republic."

It goes on to say that "greater force and fitness is imparted to this protest by the fact that this aggressive movement was prepared in the waters of His Majesty whilst the British and Venezuelan Governments were enjoying relations of a peculiarly cordial character."

As regards the injury to Venezuela commerce none whatever has taken place, for ships of all nations—Venezuelan included—come and go with their usual regularity, and, as your lordship will see from the inclosed copy of a dispatch from the British vice-consul at La Guaira, the evidence forwarded to me officially by the Venezuelan Government of the boarding of the sloop *Santa Clara*, with the object of endeavoring to give some further ground that the *Ban Righ* was a pirate than the only one hitherto put forward by them, that on the 30th December she had that character because she was unprovided with papers—a statement which I disproved—is not of more value than that statement itself.

I have ventured to abstain from translating the declaration of the crew, of which I only send copies, as they are formed on the same model as that of the captain, of which I have the honor to inclose a translation.

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[Inclosure 1.—Translation.]

*General Pachano to Mr. Haggard.*

CARACAS, January 14, 1902.

M. LE MINISTRE: On the 3d instant your excellency informed the Government of the Republic that you had received official information that the steamship *Ban Righ*, which had changed its name to the *Libertador*, and which the executive power had just declared a pirate, flew the English flag and was provided with British papers. Such a circumstance must be considered very serious, since the Government had categorical proof of the hostility of the ship, and sufficient motives for thinking that it was being directed into Venezuelan waters in manifest connivance with the rebels which existed in two Venezuelan States. The proclamation issued on board was full confirmation of the above, notwithstanding the slight importance which your excellency attributed to this rebellious act against the National Government.

Shortly afterwards the sloop *Santa Clara* arrived at the port of La Guaira, with the upper works destroyed by that pirate ship; and later it was known that the crew of the *Ban Righ* had been taken from the revolutionaries who had had asylum in Trinidad and Curaçao—as is public and notorious in those Antilles—to be secretly conducted to the coast of Venezuela with the object of being disembarked there.

The Government has as yet obtained no information that the British nation, from whose ports, according to your excellency's own statement, was dispatched this hostile ship, has ordered the judgment and punishment of those who contributed to its armament, although it includes in its legislation such adequate dispositions as that called "the foreign enlistment act, 1870." And if, as we have to suppose, His Majesty's Government does not support the conduct of the fitters-out and the crew of the ship, it would seem to be it which ought, in the first place, to instigate the legal measures for their subsequent punishment.

Neither maritime law nor any principle or concrete maxim of international law can support a ship situated in this abnormal condition; and as the Government of Venezuela has taken measures that one part of the national fleet shall go to search for, to chase, or to destroy it, in accordance with the necessities of its own defense, the President wishes your excellency to be informed of the new proofs of the culpability of the ship in case British subjects, incorporated in its crew, should fall under the natural but just action of the country attacked.

At the same time the Government wishes to solemnly protest against the unusual fact of the equipping in and the dispatching from British ports a ship with the intention of injuring Venezuelan commerce, and of disturbing by piratical operations the tranquillity of the Republic. Greater force and fitness is imparted to this protest by the fact that this aggressive movement was prepared in the waters of His Majesty while the British and Venezuelan Governments were enjoying relations of a particularly cordial nature.

In order that your excellency may judge better of the acts perpetrated by this pirate ship I inclose a certified copy of the declarations on the subject of the boarding of the sloop *Santa Clara*—declarations in which your excellency will find other facts showing the revolutionary character of the ship, in contradiction to those showing its legality, which, in accordance with the information of the British legation, might be attributed to it.

Accept, etc.,

J. R. PACHANO.

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[Inclosure 2.—Translation.]

*Declaration.*

DEPARTMENT VARGAS OF THE FEDERAL DISTRICT,  
The Prefecture, La Guaira, January 9, 1892.

In accordance with a summons from the office there appeared before it to-day at — a. m. the captain of the sloop *Santa Clara*, who, under oath, said that his name was Henry van der Hans, being 29 years of age, single, of a sailor's profession, and a native of Curaçao. He was interrogated by the prefect of the Department, Vargas, thus:

Q. What day and at what hour did you meet the revolutionary steamer which caused the injuries to the sloop of which you are captain?—A. On the 3d instant, at about 12 in the day.

Q. Say how it was that the revolutionary steamer caused the injuries to the sloop of which you are captain?—A. On the day and at the hour which I have mentioned I was going to Piritu from Barcelona, and between capes Unare and Codera, and at about 20 miles from the coast, we met the revolutionary ship, which ordered us to heave to and to let the boat into the water, and that I was to go aboard. When I prepared to do what they told me the steamer began to back in the direction of my boat, and the more that I shouted out to them to make the steamer go in a forward direction, because they were likely to upset me, they kept on backing, coming down upon me, and with the stern of the

steamer broke off my bowsprit and the mast. Five men then got into the steamer's boat whom I do not know, and took me on board the steamer.

Q. What flag had the steamer to which you refer?—A. It was flying none, but after it left us a signal flag was hoisted of a white color with a blue ball in the center. That flag was hoisted on the back mast, and the steamer had two masts.

Q. What armament has the steamer to which you refer?—A. I saw two cannon of about three or four varas [sic], one on the poop and the other in the bows; but one of the men on board told me that they had six cannon more to mount.

Q. Tell me who composed the crew of the steamer?—A. The crew were Venezuelans. I can not calculate their number, nor do I know any of them. I can only say that one of the crew asked me if I knew a fair man who was present dressed in plain clothes, and when I told him no he told me that it was Roland.

Q. What other questions were you asked on board?—A. A tall gentleman, thin, with a white beard and spectacles, took me to a room, and in presence of three others, one of which was he, who I had been told was Roland, asked if I knew where were the war ships of Venezuela, to which I answered that I did not know, as I had been more than a month away from La Guaira. Then he said, "If he has been a month away from La Guaira he does not know." I bear witness that the steamer is painted black, and has also a black funnel. It has two decks in the lower one. I saw people who appeared to me to be troops, and above there were only officers; and I saw no arms of any kind, except the cannon to which I have referred.

Q. Did you not claim anything for the damage sustained by your boat?—A. Yes, I did; but they told me they could not give me anything now; that I might take the name of the ship and of the master, whose name was Matos. They afterwards went on board the sloop and took some plantains and some bunches of bananas.

Q. How were the cannons that you saw mounted?—A. They were mounted on pillars of iron and with armor.

He ended, read it, and ratified its contents, and accordingly signed.

JUAN CASANAS.

HENRIQUE VAN DER HANS.

The Secretary,

MARTIN SILVA M.

MINISTRY FOR FOREIGN AFFAIRS,

DIRECTORY OF FOREIGN EXTERIOR RIGHT,

Caracas, January 14, 1902.

This is a faithful copy of the proceeding sent by the ministry for the interior.  
The Director,

MANUEL FOMBONA PALACIO.

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[Inclosure 3.—Extract.]

*Vice-Consul Schunk to Mr. Haggard.*

LA GUAIRA, January 16, 1902.

With reference to my conversation with you relative to the incident which occurred between the steamer *Ban Righ* and the Venezuelan sloop *Santa Clara* off the village of Machuracuto, on the Venezuelan coast between Uchire and



Carenero, I now have the honor, at your request, to state to you officially the facts of the case as locally reported here by parties well informed.

On the evening of the 5th instant the sloop *Santa Olara* arrived at La Guaira, and next morning it was known that she had met the steamer owned by the revolutionary leader Matos during the night of the 2d or 3d instant, and on her being overhauled by it an accident had occurred, in which the sloop lost her bowsprit through a wrong maneuver on the part of the steamer. On this taking place the crew of the sloop, through fear of the revolutionists and fright at what they thought might be a serious accident, threw themselves into the water, when the steamer at once put out a boat to save the men and brought them on board. On the men being reassured they trafficked with the ship, selling some of the fruit on board the sloop, which had been taken in tow. They sold altogether 1,000 plantains and 100 bunches of bananas.

The commander of the steamer then indemnified the captain of the sloop to the amount of \$150 American gold, which was very liberal, for this sum was greatly in excess of the damage sustained. The steamer towed the *Santa Olara* from the place of the accident to the point of Naiguata, near La Guaira, in order to enable it to reach this port without difficulty.

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[Inclosure 4.]

*Mr. Haggard to General Pachano.*

CARACAS, January 17, 1902.

M. LE MINISTRE: The object of this note is not to answer that which your excellency did me the honor of addressing to me on the 14th instant, but to correct an erroneous statement in the latter.

2. Your excellency alleges that I have made the statement that this "hostile ship" was dispatched from the ports of Great Britain.

3. I regret that your excellency should have attributed to me, in an official note, statements which I not only have not made but which it would have been impossible for me to make, as the only knowledge which I possess on the subject is that which I have from newspapers, where I have seen, on the contrary, that the *Ban Righ* was equipped in, and subsequently dispatched from, not the port of London, but that of Antwerp.

4. If this be the case, the "solemn protest of the Venezuelan Government against the unusual fact of the equipping in, and dispatching from, English ports a ship with the object of injuring Venezuelan commerce and of disturbing, by piratical operations, the tranquillity of the Republic, etc.," can have no sort of application to the present case.

5. Your excellency would seem to have confounded the fact of the possession by a ship of English papers with its equipment in, and subsequent dispatch from, English ports—two very different things.

6. However, even supposing that the ship had been equipped in, and dispatched from, an English port, I should not enter into the question of the unusual responsibility which, although no declaration of war has been made by Venezuela, nor have the parties in the revolutionary contest been recognized as belligerents, the Venezuelan Government is attributing to His Majesty's Government on the strength of an apparently erroneous allegation; for, as I have already informed your excellency that I have done with your previous communications, I will lose no time in forwarding this note to His Majesty's Government, who will doubtless give it their best consideration. I will, therefore, only take the opportunity of informing you that until I have their

instructions in the matter I do not propose to enter into any further correspondence on the subject, but, in view of the circumstances contained in your excellency's note under reply, that you again call the *Ban Righ* a pirate, and that you speak somewhat enigmatically of the fate which may attend British subjects in case of their being incorporated in her crew if she is seized, I will limit myself to again insisting that if the crew is captured and any British subjects be found amongst them they can not be treated as piratical.

I avail, etc.,

W. H. D. HAGGARD.

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*Board of Trade to Foreign Office—(Received February 14).*

[Extract.]

No. 58.]

BOARD OF TRADE, *February 14, 1902.*

I am directed by the board of trade to state, for the information of the Marquis of Lansdowne, that they have received through the registrar-general of seamen a report from the registrar of shipping at Aberdeen to the effect that the registry of the *Ban Righ* was closed on the 7th instant.

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*Acting Consul Hudson to the Marquess of Lansdowne—(Received February 20).*

[Extract.]

No. 59.]

PANAMA, *February 3, 1902.*

Referring to the telegrams which have passed between your lordship and myself in regard to the steamer *Ban Righ*, renamed the *Libertador*, I have the honor to transmit herein to your lordship copy of a dispatch which I have received from the acting British vice-consul at Barranquilla.

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[Inclosure.]

*Acting Vice-Consul McDougall to Acting Consul Hudson.*

BARRANQUILLA, *January 16, 1902.*

SIR: I beg to state that the owner called to-day and apologized for the *Libertador* showing the British flag. It appears the boat came in without a flag and asked for the visit. The captain of the port then insisted on a flag, and the owner was afraid to show a Venezuelan one, would not show a Colombian one, and put up a British one to secure a visit.

I informed him clearly he must not show the British flag, and he distinctly agreed to my instructions, wishing at the same time to make a manifestation verbally that he owned the *Libertador*. I told him I would send an account of the said assertion to you.

The ship is still here.

I have, etc.,

G. C. McDOUGALL.

*Colonial office to foreign office—(Received February 21).*

No. 60.]

DOWNING STREET, *February 20, 1902.*

SIR: With reference to the letter from this department of the 7th instant and to previous correspondence, I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquis of Lansdowne, the accompanying copy of a dispatch from the governor of British Guiana inclosing copies of further statements by two members of the crew of the British sloop *Indiana*, which was seized by the Venezuelan authorities in December last.

I am, etc.,

C. P. LUCAS.

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[Inclosure 1.]

*Governor Sir J. A. Swettenham to Mr. Chamberlain.*

GOVERNMENT HOUSE,

*Georgetown, Demarara, January 28, 1902.*

SIR: In continuation of my dispatches of the 31st ultimo and of the 15th instant I have the honor to transmit herewith, for your information, copies of further statements by two members of the crew of the sloop *Indiana*. I have forwarded copies of them to the British minister at Caracas.

I have, etc.,

J. A. SWETTENHAM.

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[Inclosure 2.]

*Statement by James Nixon.*

I was a sailor on board the sloop *Indiana*, bound for Morawhanna. We arrived at Morawhanna and were discharged. After that we dropped down to a provision grant owned by a Chineese called Mack to discharge some scantling, and thence on Sunday morning dropped down the Spanish Main and stopped at a place called Nedharry's Grant. We slept there on Sunday night and Monday. On Monday at 6 o'clock p. m. the Spanish came and seized the vessel. Four of them came down in a boat and two came on board, one of whom was armed with a rifle. They asked for the captain. I said he was on shore. They sent me for him. I went and called him. He came on board, and they asked him for his pass. He said he hadn't any, because the other general who was there had not given him any, but had told him he could go to the Spanish side to take in cargo, but not to discharge. They said he ought to have a pass, because he had come over the Spanish boundary. The man with the rifle (who had been speaking in English all the time) then said that he seized the boat, and that the captain and sailors were his prisoners. He then commanded the anchor to be raised and the boat to be taken to Amacuru. The captain and myself and Charles Grant, the other sailor, with the four Spaniards, went down in the boat to Amacuru. On the Tuesday night before we got to Amacuru the captain took a corial and escaped. On Wednesday afternoon at 4 o'clock we arrived at Amacuru. We were on board in the river for eleven days, with a sentry always posted over us. On Saturday, the 4th January, the sentry who had been on shore told us that the general was going to send us in the boat to

Bolivar next day. On the 5th we left Amacuru for Bolivar, with the sentry in charge of the boat. We were working the boat. The sentry threatened to shoot me if I did not work quicker, telling me that, as we were in Spanish territory, he could do whatever he liked with me. That same night myself and Grant took a boat which we were towing and escaped while the sentry was sleeping. We were near Bolivar when we left the *Indiana*. We sailed down the Orinoco in the small boat and got to Trinidad. I reported myself to the warden of the first port we arrived at, and he took us before the magistrate, who allowed us 20 cents a day until we could be sent to Port of Spain. Three days after we went and reported to the harbor master, who sent us to the Government office. We saw the governor, who gave us a free pass to Demerara and a 1s. each after we had told him our story. He sent us by the boat that arrived here at 11 a. m this morning. I don't know the name of the boat. I did not see the captain escape, but I missed him about an hour after I had last seen him, and also missed the corial.

JAMES (his x mark) NIXON.

Witnesses to mark:

CLAUDE W. DUNCAN, *S. I.*

J. ABRAMS, *P. O. 1139.*

Taken by me this 17th day of January, 1902.

CLAUDE W. DUNCAN, *S. I.*

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[Inclosure 8.]

*Statement by Charles Grant.*

I am an aboriginal Indian and am employed as a sailor by ——— Jardine, who keeps a stall in the Stabroek Market, Georgetown. The vessel is a sloop of about 14 tons burthen. The captain's name is Aaron Barton, and the other sailor's name is James Nixon; three in all. We carried provisions from Georgetown to Morawhanna, and returned to Georgetown with corn, the property of people living on Venezuelan territory on the Barima River.

I know the line which separates British from Venezuelan territory. About a mile from the line on the Venezuelan side there is a Spanish flag flying. On or about the 15th December we entered Venezuelan territory and passed the flag about 2 miles. The boat was empty and lying at anchor. We had delivered to their owners a number of barrels in which they had sent corn to Georgetown on our last trip. On Saturday a boat which came from the direction of Amacuru pulled up alongside. There were four men on board, three were white and one black. The black man acted as interpreter. We were told that one of the men was a general, one a policeman, and the third the governor's secretary. We were asked if we had carried any provisions from the English side. We said no. Then they said that they would shoot us before 6 p. m. if we had not told them the truth. We returned to English territory, followed by the Venezuelans. Our captain was not with us.

On the following Monday we returned to the same place to take on a cargo of corn. While lying at anchor the Venezuelan boat with the general and his companion came alongside. Our captain was on shore. The general asked for the captain. When the captain came the general asked him for his passport. The captain said he had none. The general then took change of our sloop and took us and it on the Amacuru.

On Wednesday night, while we were anchored a short distance from Amacuru, the captain escaped in the general's small boat. I have not seen our captain since. We were detained at Amacuru for a fortnight on our own boat.

An armed sentry was always in charge. The general told us through the interpreter that they proposed sending us to Bolivar to use us in the war. We always had the freedom of the sloop. We were allowed to visit the town daily, but at such times were in charge of an armed sentry. We were, on the whole, well fed and treated. We felt we were under arrest, and would not be allowed to return to British territory. When they first took charge of the boat they said that it would be returned to its owner, and that they would take us to the Spanish consul at Bolivar and give evidence why they arrested us and seized the sloop.

On Saturday, the 28th December, 1901, the sentry told us to make preparations to go to the war at Bolivar the following day. That night the sentry fell asleep, and at about 12 midnight we escaped in a small boat belonging to the general.

The general was a tall white man, about 5 feet 11 inches, dark complexion, hooked nose, dark full whiskers and mustache, wore white tunic and trousers, and carried a sword. I never saw him before those dates, and did not know or hear his name.

The policeman was also a white man, about 5 feet 6 inches high, wore black side whiskers and mustache, slight build, dressed in blue trousers, no jacket, and was barefoot. He carried a Winchester rifle.

The government secretary was a white man, 5 feet 5 inches high, slight make, wore dark side whiskers and mustache; was not armed; dressed in brown tweed trousers and jacket, and wore a straw hat. He wore white shoes.

We arrived at a village named Cedros, in Trinidad, on the Friday following our escape. We reported ourselves to the warden, Mr. Allcock. He took us on the following day to the magistrate. He sent to the harbor master, Port of Spain, who took us to the governor. The Government secretary inquired into our case and paid our passage back to Georgetown. We arrived at Georgetown this morning by the steamship.

The day following our arrival at Amacuru we were taken before a white man, whom we were told was the governor of Amacuru. The interview was in an office at a private house. He asked us if we had brought any goods from the English to the Venezuelan territory. We said no, but that we had brought empty barrels. He said the captain was wrong to have crossed the boundary without a passport. After we left the governor's the interpreter told us that the governor told the general that he had acted wrongly in seizing our boat, to which the general replied that if his mother got out of her grave the boat would not be returned.

CHARLES (his x mark) GRANT.

Witness:

LepL 1163.

GEORGETOWN, January 17, 1902.

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*Acting Consul Hudson to the Marquess of Lansdowne—(Received February 27).*

No. 61.]

PANAMA, February 10, 1902.

MY LORD: In continuation of my dispatch of the 3d instant in reference to the steamship *Libertador*, formerly the *Ban Righ*, I have the honor to report to your lordship the information given to Commander Cooper-Key, of His Majesty's ship *Psyche*, and myself

on board of the Royal Mail Steam Packet Company's steamship *Atrato* at Colon by a Mr. Rudolph de Paula, a passenger bound for England, and who joined the ship at Cartagena.

This gentleman stated that he was the late owner of the steamer *Ban Righ*; that he had purchased her on behalf of the Colombian Government, and that the purchase by them from him was not completed until after the ship's arrival at Martinique, where the balance of the purchase money was handed to him; that he had been instructed by the Colombian Government when he was to Antwerp, the port of call of the vessel after leaving England, to transfer the vessel to M. Matos upon the completion of the purchase by them.

According to Mr. De Paula's statement, the vessel arrived at Martinique on the 30th December last and remained until the evening of the 1st January. Whilst there the crew on board from England were paid off, with the exception of one or two, including the master, and some difficulty was experienced in obtaining another crew for the ship, and Mr. De Paula stated privately that the local authorities at Martinique, who are assisting the Venezuelan insurgents, lent their aid in obtaining men.

The transfer of the vessel was made the following day, 2d January, at sea, by bill of sale from De Paula to Matos, which transaction was reported by Mr. De Paula from Savanilla, the first port of call, to the registrar at Aberdeen. The British register, I understand, has been retained on board. The reason given by Mr. De Paula for the transfer being made at sea and not at Martinique is that there was no time at the latter place and too much confusion on board.

There appears to have been no excuse for hoisting the British ensign at Savanilla, the reason given being that Matos feared to hoist either the Colombian or Venezuelan flag, because he was uncertain whether the Colombian Government or Colombian insurgents were in possession of the port.

I have, etc.,

EDWARD F. HUDSON.

*Mr. Haggard to the Marquess of Lansdowne—(Received March 12).*

No. 62.]

CARACAS, February 23, 1902.

MY LORD: The Dutch chargé d'affaires informs me that the *Liberador* has been lately in harbor in Curaçao, though not in the main harbor.

It would have been impossible for her to do this had her papers—presumably Colombian—not been in perfect order.

I have, etc.,

W. H. D. HAGGARD.



*Colonial office to foreign office—(Received March 12).*

No. 63.]

DOWNING STREET, *March 12, 1902.*

SIR: I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquis of Lansdowne, the accompanying copy of a further telegram which has been received from the governor of the Windward Islands, relating to the visit of the *Bolivar* (alias *Ban Righ* and *Libertador*) to St. Lucia.

I am, etc.,

C. P. LUCAS.

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[Inclosure.—Telegram.]

*Governor Sir R. Llewelyn to Mr. Chamberlain.*

[Received *March 11, 1902.*]

Information received that *Bolivar* flew Colombian national flag proceeding into harbor and on departure.

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*Colonial office to foreign office—(Received March 25).*

No. 64.]

DOWNING STREET, *March 25, 1902.*

SIR: With reference to the colonial office letter of the 12th instant on the subject of the vessel variously known as the *Ban Righ*, *Libertador*, and *Bolivar*, I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquis of Lansdowne, the accompanying copy of a telegram from the governor of Trinidad, reporting that the vessel has entered the harbor of Port of Spain and has been followed by two Venezuelan armed gunboats.

2. I am to inquire whether any instructions can now be given as to the treatment of this vessel.

3. A copy of this cablegram is also being communicated to the Admiralty.

I am, etc.,

C. P. LUCAS.

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[Inclosure.—Telegram.]

*Governor Sir A. Moloney to Mr. Chamberlain.*

[Received *March 24, 1902.*]

Referring to my telegram of 4th March, *Ban Righ*, Colombian Government ship of war, entered here yesterday morning, later followed by two Venezuelan Government armed gunboats. His Majesty's ship *Indefatigable* here, and I beg to urge that she should remain in the colony.

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[Extract.]

*Admiralty to foreign office—(Received March 26).*

No. 65.]

ADMIRALTY, *March 26, 1902.*

With reference to previous correspondence, I am commanded by my lords commissioners of the Admiralty to request you will inform the

secretary of state that a telegram, of which the following is a copy, has been received from the commander in chief on the North American and West Indies station :

Colombian man-of-war *Bolívar*, late *Ban Righ*, arrived Trinidad 23d March ; man-of-war's flag ; commission from Colombian Republic, signed by Juan Tobar, general.

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[Telegram.]

*The Marquess of Lansdowne to Mr. Haggard.*

No. 66.]

FOREIGN OFFICE, March 26, 1902.

As the *Bolívar* is stated to be now flying the Colombian national flag, and, ostensibly at least, is a man-of-war of that State, His Majesty's Government are not in a position properly to take any action against her. It would be an act of war against Colombia to do so if she is a Colombian public vessel.

His Majesty's Government are under no liability for any depredation that she may commit, nor can Venezuela properly put forward any charge of negligence in view of the circumstances in which the vessel was permitted to leave this country. If the British flag has been used since the transfer effected at Martinique it was a wrongful act, no responsibility for which attaches to his Majesty's Government.

The vessel will not, however, be allowed to make any British port a base of hostile operations against Venezuela, and the governor of Trinidad has consequently been instructed to refuse her permission to coal and to request her at once to leave Port of Spain.

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[Extract.]

*Mr. Haggard to the Marquess of Lansdowne—(Received March 27).*

No. 67.]

CARACAS, March 3, 1902.

I have the honor to inclose a translation of a note respecting the case of the *Ban Righ*, which I have received from General Pachano.

I have acknowledged the receipt of this note.

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[Inclosure.—Translation.]

*General Pachano to Mr. Haggard.*

CARACAS, February 28, 1902.

M. le MINISTRE: Your excellency's note of the 14th has convinced the Government that all discussion on the question of doctrine or law on the subject of the *Ban Righ* (*Libertador*) will have useless and sterile results, since you appear to have resolved to establish between your own opinion and the facts brought

forward by the Republic a connection openly opposed to what the cordial relations of friendship existing between England and Venezuela would suggest or advise.

This is the situation of affairs:

Toward the end of last year a ship with an English flag, and provided with British papers, left the waters of the United Kingdom, since which time a person who said that he was chief of a certain revolutionary movement declared himself in rebellion against the Venezuelan Government and the institutions of the Republic. The ship having been declared a pirate by the Government of the nation against which it began to perpetrate acts contrary to maritime international law, your excellency tried in a conference with me to take exception to that declaration, and even went so far as to say in one of your notes, that of the 3d January, that on this occasion you had warned "the Venezuelan Government in the most friendly, but at the same time in the most serious, manner to avoid any infraction of international law with reference to British life and property in the case of the capture of the *Ban Righ*." At the same time you declared that your Government had approved your excellency's language in the conversation held with me which I have just recorded.

Vain were the proofs which the Government presented of the manifest infringement of the British laws even by the insurgent ship; vain the diligence with which the conduct observed by England herself on former occasions was traced out; vain the requests and protests presented by the Government in the name of the injured country. For all explanation, your excellency said finally in your note of the 24th January, when the ship had already committed depredatory acts and had disembarked secretly on the shores of the Republic armed expeditions in order to stir up war in the interior, that its dispatch from English ports had only been for the Colombian Government. The presentation of this fact lent more gravity to the occurrence. The ship's fault was greater. The responsibility of the crew, even with regard to British law, became more flagrant. And your excellency, nevertheless, confines yourself to saying, in your note of the 6th instant, in order to free the authorities of the United Kingdom from all responsibility, that "the ship's career, subsequent to its start, was not a matter of interest for His Majesty's Government."

Without change of papers, which it could not do, and with successive change of flag, name, and destination, the steamer *Ban Righ* (*Libertador*) continued its acts of depredation in the waters and on the coast of Venezuela.

On board, the chief of the rebellion in question continued issuing proclamations of war and revolutionary communications, one of which, published in *El Imparcial*, of Curaçao, and in other papers of the island, spoke of the complete destruction of a Venezuelan ship (that called the *Oresco*) by the guns of the same rebel steamer; add to this fact, as a new proof of the culpability of the *Ban Righ*, that of her having fired on Cumarebo and committed serious ravages on the population.

Amongst the evident proofs which the Government has of the hostility exercised against the Republic by the ship which left British ports with an English flag are the autograph letters themselves written from the ship by the chief of the rebellion—letters which incite to sedition in the interior of the Republic—in combined or simultaneous action with the same pirate ship.

The state of things produced by the presence of the *Ban Righ* in Venezuelan waters can not but affect in a very direct manner the responsibility of those who gave the ship the opportunity of arriving unhindered on the theater of its insurrectionary plans. To deny all responsibility when such responsibility is proved amounts, up to a certain point, to not recognizing in the Government the faculty

of judging what constitutes an injury to themselves, a right which they possess, and which is clearly defined.

His excellency the President does not, therefore, think that such a situation can exist, and much less can he admit your excellency's opinion that the thing is a "chose jugée." With regard to this he has given me orders to express very respectfully to your excellency that he awaits the result of the requests relative to the *Ban Righ* in order to be able, free from every unfortunate impression, to continue considering with your excellency, on bases of mutual cordiality, the other matters which reciprocally concern the Venezuelan Government and the legation of Great Britain.

Accept, etc.,

J. R. PACHANO.

*Mr. Haggard to the Marquess of Lansdowne—(Received March 27).*

No. 68.]

CARACAS, March 7, 1902.

MY LORD: With reference to your dispatch of the 31st January, I have the honor to inform your lordship that, on the receipt of a dispatch from the governor of British Guiana complaining of the seizure of the *Indiana*, I addressed a representation to the Venezuelan Government on the subject, giving all the details of the case.

Not having received a reply to this communication, and having received further evidence on the matter from Sir James Swettenham, I addressed another note to the Venezuelan Government on the matter. I at the same time requested His Majesty's consul at Bolivar to endeavor to ascertain the circumstances connected with this matter, and to furnish the information direct to his excellency as well as to myself.

I subsequently received a reply from the minister for foreign affairs, stating that my notes had been sent to the minister for the interior for inquiry into, and report to be made on the subject as soon as possible. That report has not yet reached me, but Mr. de Lemos has sent me his to his excellency, of which I have the honor to inclose a copy, which would seem to indicate the probable result of the inquiry. When it reaches me, I will lose no time in forwarding it to your lordship.

I have, etc.,

W. H. D. HAGGARD.

[Inclosure.]

*Consul de Lemos to Governor Sir J. Swettenham.*

CIUDAD BOLIVAR, February 25, 1902.

SIR: I am requested by His Majesty's minister at Caracas to inquire into the seizure of the colonial British-owned sloop *Indiana* in the Barima River on the 16th December and forward the information direct to your excellency.

On inquiry I find that, according to the sworn statement made before the fiscal court of this city on the 27th January by Gen. Luis Felipe Rojas Fernandez, Government secretary of the Amacuro territory, the following occurred:

On the 16th December the said Rojas Fernandez met in Venezuelan waters

of the Barima River, about 14 miles from the British boundary, a sloop which, without flag or papers of any kind, lay anchored in front of a house and a garden.

He instituted inquiries and found that the captain was on shore, that the name of the vessel was the *Indiana*, and that she had come with a cargo of merchandise, which had been transhipped on the boundary in small boats to be introduced into the Amacuro territory; that later on he saw the captain, who confirmed this and stated that this was the fourth voyage he had made from Demerara.

He then arrested the vessel and took her to the port of San José d'Amacuro. The captain escaped in small dugout.

The vessel should then have been brought up to Ciudad Bolívar, but on the 28th December a violent hurricane carried the sloop from her anchorage at San José d'Amacuro on to the Sacupana bar at the mouth of the river.

Efforts were made to save her, but without avail.

According to reports received from the local Indians the crew left the vessel in her boat for Trinidad, abandoning the vessel and carrying off what could be moved.

The parties who accompanied the Government secretary were Captain Firmín Álvarez, a black man called Alfreda, and a policeman named Margarita.

Here ends the declaration of Gen. Rojas Fernandez, and follow declarations of the parties named as accompanying him, saying everything is as stated by Fernandez.

It is to be observed that there is no counter declaration by the captain and crew, who should have been heard; and, further, that apparently no contraband goods were found on board the vessel, while it seems strange that the captain of the sloop should accuse himself of smuggling.

No further action can be taken in the matter here, as the authorities of the Amacuro territory depend direct from the Caracas Government.

With reference to the alleged rape on an Indian, it is impossible to obtain evidence here, but rumors of something having occurred seem to be current.

I have, etc.,

C. H. DE LEMOS.

*Admiralty to foreign office—(Received March 29.)*

No. 69.]

ADMIRALTY, March 29, 1902.

SIR: I am commanded by my lords commissioners of the admiralty to transmit for the information of the secretary of state for foreign affairs copy of a telegram, dated the 28th March, from the commander in chief, North America, respecting the *Bolívar* (late *Ban Righ*).

A copy has also been sent to the colonial office.

I am, etc.,

EVAN MACGREGOR.

[Inclosure.—Telegram.]

*Vice-Admiral Sir A. Douglas to Admiralty.*

BERMUDA, March 28, 1902.

*Indefatigable* reports *Bolívar* machinery damaged; will be disabled probably two months.

[Telegram.]

*The Marquess of Lansdowne to Mr. Welby.*

No. 70.]

FOREIGN OFFICE, April 2, 1902.

The governor of Trinidad reports that a vessel, now named the *Bolivar* and formerly the *Ban Righ*, is lying disabled at Port of Spain, flying the Colombian national flag and holding a commission from the Colombian Government.

She is understood to have committed various acts of hostility against Venezuela, although no state of war exists between those two Republics.

The vessel can not be allowed to refit in a British port unless and until the Colombian Government give satisfactory assurances (1) that she is a Colombian public vessel; (2) that they will not permit her to engage in future in any such irregular hostilities against Venezuela as are alleged to have occurred.

Inform the minister for foreign affairs accordingly.

[Translation.]

*Señor Ponce to the Marquess of Lansdowne—(Received April 4).*

No. 71.]

COLOMBIAN LEGATION, April 3, 1902.

MY LORD: I have the honor to inform your excellency that I have just received a telegram from M. Becerra, Colombian consul at Port of Spain, in which he asks this legation to support a request that he has made to his excellency the governor of Trinidad, that certain arms, etc., destined for the Colombian port of Cartagena, may be dispatched from the colony with the least possible delay.

While respectfully soliciting from His Majesty's Government a favorable consideration of Consul Becerra's request, I have, etc.,

IGNACIO GUTIÉRREZ PONCE.

*The Marquess of Lansdowne to Mr. Haggard.*

[Telegram.]

No. 72.]

FOREIGN OFFICE, April 5, 1902.

The *Ban Righ* being at present at Trinidad disabled, instructions have been sent to His Majesty's minister at Bogota to inform the Colombian Government that until satisfactory assurances are received on the following points—

1. That she is a public vessel belonging to the United States of Colombia; and

2. That she will not be permitted to engage in future in any irregular hostilities against Venezuela, such as are alleged to have occurred—

permission can not be given for her to refit.



A request has been received from the Colombian consul at Port of Spain asking that rifles and ammunition may be sent to Cartagena in a British vessel. His Majesty's Government must await the result of the communications with the Colombian Government on points above noted, and can not give the required permission. The governor of Trinidad will be informed accordingly.

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*Colonial office to foreign office—(Received April 9).*

No. 73.]

DOWNING STREET, April 8, 1902.

SIR: I am directed by Mr. Secretary Chamberlain to transmit to you, for the information of the Marquis of Lansdowne, the accompanying telegram which Mr. Chamberlain has addressed to the governor of Trinidad for his guidance in the matter.

I am, etc.,

C. P. LUCAS.

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[Inclosure.—Telegram.]

*Mr. Chamberlain to Governor Sir A. Moloney.*

DOWNING STREET, April 7, 1902.

It will be necessary to await result of communication with Colombian Government, and, in meantime, permission should not be granted to forward ammunition and rifles by British vessel to Cartagena. In no case is it possible to entertain proposal that *Bolívar* should be towed to nearest port by one of His Majesty's ships.

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*Mr. Haggard to the Marquess of Lansdowne—(Received April 10).*

[Extract.]

No. 74.]

CARACAS, March 14, 1902.

In my dispatch of the 3d instant I had the honor of inclosing a copy of a note from the Venezuelan Government, in the final paragraph of which I am informed that, as long as the situation created by the dispatch of the vessel continues, the Venezuelan Government can not discuss any other matter.

The minister for foreign affairs sent me to-day the note, of which I have the honor to inclose a translation.

The statement at the close of the first is also, your lordship will see, repeated in the paragraph closing this note, the only difference being that the wording would seem to eliminate the idea which might have been suggested in the former of any intention of a practical suspension of relations between the Government and this legation.

[Inclosure.—Translation.]

*General Pachano to Mr. Haggard.*

CARACAS, March 13. 1902.

M. LE MINISTRE: To the proofs accumulated by the Government, and which increase day by day, with reference to the damages which the Republic has sustained from the dispatch of the *Ban Righ* from English ports, His Excellency the President has now decided to add those of the indifference displayed by the authorities of Trinidad as to the actions of the steamer in question, and the still graver proofs of the toleration with which they have seen the preparation in the very territory of the island, and the public and notorious exit thence of expeditions in arms against the peace of the Venezuelan States nearest to the colony. Your excellency will not have forgotten the earnestness with which the cooperation of the legation was asked some time back to take measures against the island of Trinidad being made the center of plans directed against the public tranquillity in Venezuela, and although at that time all the good will which was to be expected, and which had just been spontaneously shown in conformity with international law by another British magistrate (his excellency the governor of Granada), was not evinced by either your excellency or the new governor of Trinidad, the Government had never supposed that indifference as to the tranquillity of a friendly people would be carried to such a pitch by His Majesty's agents that it would actually attract the attention of the inhabitants of Trinidad, and would form the subject of censure on the part of local press of the colony.

The Government of the Republic, without relying on any other proof than that which it possesses directly, finds that the ship dispatched from England, arriving in these seas with a British flag and provided with fighting materials, has been existing for more than two months as a constant injury to Venezuelan commerce, and, after having destroyed national ships and fired grape-shot on open and defenseless places, received and took openly from the territory of that island (or, which is the same, from one of the dominions of His Majesty) reinforcements of men and arms to continue in its work of destruction. Such a state of things is all the more flagrant, as it is clearly opposed to the character of the friendly relations which Venezuela cultivates with Great Britain.

As the simple application of certain laws of the Kingdom appeared to be enough to prevent these injuries, which related as much to the actions of the steamer as to the expeditions from Trinidad, the Government, in thus considering it and observing that there follows from this circumstance an omission of the most elementary duties of good friendship, protests against it, and reserves to itself the right of claiming damages on account of the injuries which have been sustained by the national interests owing to this omission.

At the same time they repeat their proposal, which has already been communicated, to defer the consideration of every matter that may be reciprocally important to the two countries until the time when such an irregular situation (as considered from the point of view of public right), and one, too, so opposed above all to the spirit of cordiality which dominates the relations of Venezuela with Great Britain shall cease or be compensated for.

Accept, etc.,

J. R. PACHANO.

*Colonial office to foreign office—(Received April 11).*

No. 75.]

DOWNING STREET, April 11, 1902.

SIR: With reference to the letter of the 8th instant from this department on the subject of the steamship *Ban Righ* or *Bolivar*, I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquis of Lansdowne, the accompanying telegram relating to this vessel which has been received from the governor of Trinidad.

I am to inquire what instructions should be sent to Sir Alfred Moloney for his guidance in the event of a Colombian war vessel arriving at Trinidad, in order to carry out either of the operations suggested by the Colombian consul. It will be observed that Sir Alfred Moloney asks for an early reply.

I am at the same time to inclose, for Lord Lansdowne's consideration, two dispatches with inclosures from the governor which also relate to this vessel.

I am, etc.,

C. P. LUCAS.

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[Inclosure 1.—Telegram.]*Governor Sir A. Moloney to Mr. Chamberlain.*

[Received April 10, 1902.]

I am informed by the Colombian consul that he has telegraphed for a Colombian man-of-war to tow the *Ban Righ* from Port of Spain or to remove the arms from her.

Please inform me early whether there is any objection to either course, with or without assurance from Colombian Government that neither vessel nor arms will be used against Venezuela.

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[Inclosure 2.—Extract.]*Governor Sir A. Moloney to Mr. Chamberlain.*

GOVERNMENT HOUSE, Trinidad, March 26, 1902.

In continuation of my dispatch of the 11th instant I have the honor to report that on the morning of the 23d instant the *Ban Righ*, or *Libertador*, now called the *Bolivar*, came to an anchor in this harbor. I inclose a copy of the harbor master's report.

I immediately ordered the *Bolivar* to be quarantined pending reports from the collector of customs and the health officer. These officers, as well as the harbor master, reported everything to be in order. I also received a letter from Captain Campbell, of His Majesty's ship *Indefatigable*, the senior naval officer on the station, who also boarded the *Bolivar* and examined her papers. He forwarded to me a copy of the commission of the *Bolivar*, a translation of which I inclose. Mr. Becerra, Colombian consul at Port of Spain, certifies that the commission is issued by the proper Colombian official, and also that he has been advised by his Government that the *Bolivar* is a Colombian ship of war. I thereupon directed pratique to be granted.

I inclose copy of a minute by the harbor master, reporting that the Venezuelan gunboats, three in number, in the harbor had placed themselves in a threatening attitude near the *Bolívar*. Such "shadowing" I viewed as almost amounting to a breach of the hospitality of the port. On the advice of Captain Campbell, I ordered them to move to the other side of His Majesty's ship *Indefatigable*.

I also inclose copies of a letter I have received from General Ybarra, commander in chief of the Venezuelan navy, protesting against the action of this Government, and of my reply to him.

I inclose a copy of a letter just received from Captain Campbell, of His Majesty's ship *Indefatigable*, reporting patrolling in the harbor on the part of the Venezuelan gunboats, and also that four more Venezuelan gunboats are expected there shortly.

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[Inclosure 3.]

*Harbor master to the colonial secretary, Trinidad.*

HONORABLE COLONIAL SECRETARY: In forwarding the inclosed return of the arrival of the Colombian gunboat *Bolívar* (formerly *Ban Righ*) I have the honor to report that this vessel was admitted to pratique at about 7.30 this morning. She brought a clean bill of health from St. Lucia, dated the 28th ultimo, and reported that since that date she had been cruising.

Acting upon telephonic instructions received at about 11 a. m., I at once went off with the health officer of shipping, and after an examination of her papers, viz. a certificate by His Britannic Majesty's consul at Baranquilla of her transfer from the British to the Colombian flag on the 16th January, and her register as a Colombian gunboat dated the 25th January, 1902, she was, in accordance with instructions, placed in quarantine. From inquiries made I ascertained that no person had left the vessel nor had any communication been made with the shore up to that time.

I may add that, so far as I am able to judge, her papers are in perfect order.

The *Bolívar* was subsequently released from quarantine by me in compliance with your instructions received at 2.40 p. m. by telephone.

J. B. SAUNDERS.

MARCH 23, 1901.

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[Inclosure 4.]

*Captain Campbell to colonial secretary, Trinidad.*

INDEFATIGABLE,

*Trinidad, March 23, 1902.*

SIR: I have the honor to inform your excellency that a ship flying the Colombian man-of-war flag arrived this morning about 7 a. m. She received pratique from the harbor authorities about 8.30 a. m., and was shortly after boarded by the officer of the guard from this ship, who reported as follows:

"Colombian man-of-war *Bolívar*, screw steamer, 992 tons, having an armament of two 65-mm. guns, one on poop and one on forecastle. Last port of departure, St. Lucia; date of sailing, the 21st March; number of days out, one and a half." After receiving the report, I went on board with Lieutenant Strickland, who reads a little Spanish, and I beg to report as follows:

On arrival on board I was received by an officer who spoke English. He presented me to Gen. Eduardo Ortega, whom he described as being in command.

I explained that under the circumstances I must request to see her papers, and was shown the following:

1. A parchment paper, copy of which I inclose.
2. A letter from the vice-consul at Barranquilla, E. McDougall, to General Matos.

He also informed me he expected to remain a few days in port; one of his boilers had burst and required repair; that he was bound for a Colombian port. He carried 150 tons of coal in bunkers and 300 tons in the hold. At the same time the boarding officer of the port informed me he had been told that she was bound for St. Lucia and Martinique.

I have, etc.,

F. L. CAMPBELL,  
*Captain and Senior Naval Officer.*

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[Inclosure 5.—Translation.]

REPUBLIC OF COLOMBIA.

*From head office of the army.*

*Juan B. Tobar, General in Chief of the Atlantic Forces, to all whom it may concern:*

Knoweth by virtue of the third article of the army decree of the 19th October, 1901, I concede a military license of navigation to the gunboat *Bolívar*, registering 902 tons, whose commandant is Gen. Eduardo Ortega, in which capacity I pray that the civil and military authorities of the Republic, foreign consular agents, and vessels and authorities of friendly governments will, so long as he conforms to the rights and privileges to which they are entitled, permit him to exercise his functions with liberty.

And I offer in the name of the Republic to reciprocate the same should occasion arise.

Given, signed, and sealed with the seal of the chief head office, and countersigned by the chief of the State, major-general in Baranquilla, on the 25th January, 1902.

JUAN B. TOBAR.

Countersigned:

RAMÓN AMAJA,  
*Major-General in Chief of the State.*

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[Inclosure 6.]

*Minute by the harbor master to the colonial secretary, Trinidad.*

HONORABLE COLONIAL SECRETARY: In forwarding the inclosed return I have the honor to report that this vessel arrived during the night and is at present anchored in the usual berth taken up by these vessels near the St. Vincent jetty.

By instructions from his excellency the governor the Venezuelan gunboats *Miranda* and *Zumbador* were moved from the position in which they anchored on their arrival yesterday evening, near the Colombian gunboat *Bolívar*, to the northward, having His Majesty's ship *Indefatigable* between them and that vessel.

I have also to report that at midnight, when I was off seeing that the *Miranda* and *Zumbador* were anchored in the position I had ordered them to

take up, I found that the guardacosta *Viente tres de Mayo* had moved from her berth to a position near to the *Bolívar*. I at once ordered the captain to place her near the other two, inside and near the *Indefatigable*, and I remained there until this was carried out.

I understand that the Venezuelan gunboats *Restaurador* and *Bolívar* are expected shortly, and I shall be obliged if you will inform me whether I am to direct these vessels to anchor with the others or whether they are to be permitted to take up their usual berths inshore.

J. B. SAUNDERS.

MARCH 24, 1902.

[Inclosure 7.]

*General Ybarra to the colonial secretary, Trinidad.*

ON BOARD GUNBOAT ZUMBADOR,  
*Trinidad, March 24, 1902.*

SIR: Yesterday afternoon two vessels of the Venezuelan navy arrived here from Carupano and anchored near His Majesty's ship *Indefatigable*, where they were boarded by the harbor master and given pratique.

About 9 a. m., after permission had been obtained and arrangements made for coaling these vessels, the harbor master went on board and ordered the ships to hoist anchor and get behind the *Indefatigable*. At the request of the commanders, and with great reluctance, he allowed the ships to steam farther inside the harbor for the purpose of picking up the coal lighters, it being clearly understood that the ships would steam out immediately after to the anchorage pointed out to them by him.

I understand that an hour later, just as the lighters had been made fast to the ships, they were again visited by the harbor master and peremptorily ordered out to the anchorage above referred to. Seeing that the ships of the Venezuelan navy under my command have always rigidly respected the laws and regulations of this port, I would respectfully request that his excellency the governor would institute an inquiry into the circumstances above referred to and would at the same time advise me as to whether the harbor master was empowered to act as he did toward the war ships of a friendly nation.

I am, etc.,

A. YBARRA,  
*Commander in Chief of the Venezuelan Navy.*

[Inclosure 8.]

*Colonial Secretary, Trinidad, to General Ybarra.*

TRINIDAD, March 25, 1902.

SIR: I have the honor to acknowledge the receipt of your letter of yesterday's date in which you ask me to advise you as to whether the harbor master is empowered to order vessels of the Venezuelan navy to change their anchorage in the harbor of Port of Spain.

I am directed by his excellency the governor to inform you that by the law of this colony it is within the province of the harbor master to regulate the anchorage of all vessels within the harbor of which he has charge, and that on the occasion in question he did not exceed his powers.

Instructions have been issued that the vessels under your command will be at liberty to resume if you so desire, the berths they have been allowed to occupy in the past to the west of St. Vincent jetty.

I have, etc.,

O. C. KNOLLYS.



[Inclosure 9.]

*Captain Campbell to Governor Sir A. Moloney.*

INDEFATIGABLE,

*Trinidad, March 25, 1902.*

SIR: I have the honor to report to your excellency that during last night a boat from one of the Venezuelan gunboats was continually patrolling round the Colombian gunboat *Bolívar*, which boat was periodically relieved. At 2 a. m. I sent an officer to request the Venezuelan boat to return to its ship, and this morning went on board the Venezuelan gunboat *Zumbador*, where I met General Ybarra and requested that his boats should not patrol our waters and around the Colombian gunboat *Bolívar*. He protested against my requesting that his boats should not make free use of our waters. He also asked me where his gunboats should anchor, as he expected four shortly to arrive. I referred him to the harbor authorities.

I have, etc.,

F. L. CAMPBELL, R. N.,  
*Senior Naval Officer.*

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*The Marquess of Lansdowne to Señor Ponce.*

No. 76.]

FOREIGN OFFICE, *April 11, 1902.*

SIR: With reference to your note of the 3d instant, I have the honor to inform you that, according to reports received by His Majesty's Government, the *Bolívar*, formerly *Ban Righ*, which flies the Colombian national flag and has a commission from the Colombian Government, is now lying disabled at Port of Spain, Trinidad.

It is understood that the vessel has committed acts of hostility against Venezuela, although no state of war exists between that Republic and Colombia.

Mr. Welby, His Majesty's minister at Bogota, has accordingly been instructed by telegraph to inform the minister for foreign affairs that the *Bolívar* can not be allowed to refit in a British port unless and until satisfactory assurances have been received from the Colombian Government (1) that she is a Colombian public vessel, and (2) that she will not in future be permitted to engage in any irregular hostilities against Venezuela, such as are alleged to have occurred.

The result of this communication must be awaited, and, in the meantime, His Majesty's Government are unable to consider the request conveyed in your letter of the 3d instant that the arms and ammunition destined for Cartagena and now lying at Trinidad may be dispatched to their destination.

I have, etc.,

LANSDOWNE.

[Translation.]

*Señor Ponce to the Marquess of Lansdowne—(Received April 15).*

No. 77.]

COLOMBIAN LEGATION, *April 14, 1902.*

MY LORD: I had the honor to-day to receive your excellency's note of the 11th instant on the subject of the petition of Señor Becerra, Colombian consul at Port of Spain, Trinidad, regarding the dispatch of certain arms and munitions of war for Cartagena, which, at the said Señor Becerra's request, I had the honor to forward to your excellency in my communication of the 3d ultimo.

By the next post I shall transmit both to the Colombian minister for foreign affairs and to Consul Becerra the contents of your excellency's note, and I have no doubt that my Government will proceed to an immediate investigation of the facts referred to in the information received by His Majesty's Government in order to take the necessary steps.

I have, etc.,

IGNACIO GUTIÉRREZ PONCE.

[Extract.]

*Foreign office to colonial office.*

No. 78.]

FOREIGN OFFICE, *April 15, 1902.*

I am directed by the Marquis of Lansdowne to state that, in his lordship's opinion, there is no objection to permitting a Columbian man-of-war to remove the *Bolívar* in tow, or to take on board the arms and ammunition which are now on that vessel. The first of these courses would be preferable, but it is not necessary to insist on assurances being given with regard to either.

I am to suggest, for Mr. Secretary Chamberlain's consideration, that instructions in this sense should be given to Sir A. Moloney.

[Extract.]

*Colonial office to foreign office—(Received April 18).*

No. 79.]

DOWNING STREET, *April 17, 1902.*

I am directed by Mr. Secretary Chamberlain to acknowledge the receipt of your letter of the 15th instant and to transmit to you, for the information of the Marquis of Lansdowne, the accompanying telegram which Mr. Chamberlain has addressed to the governor of Trinidad.

[Inclosure.—Telegram.]

*Mr. Chamberlain to Governor Sir A. Moloney.*

DOWNING STREET, April 16, 1902.

No objection should be taken to Colombian man-of-war removing vessel referred to in tow or taking on board arms and ammunition now on that vessel. Of the two courses the former would be much preferable, but no assurances of any kind need be insisted on with regard to either.

[Extract.]

*Mr. Haggard to the Marquess of Lansdowne—(Received April 24).*

No. 80.]

CARACAS, March 26, 1902.

I have the honor to inclose a translation of a note in which the Venezuelan Government protest "with all the energy which the case deserves" against the reception by the colonial authorities into the harbor of Port of Spain of the insurgent steamboat *Ban Righ* (*Libertador*).

[Inclosure 1.—Translation.]

*General Pachano to Mr. Haggard.*

CARACAS, March 24, 1902.

M. LE MINISTRE: The Government has just learned that the insurgent steamer *Ban Righ* (*Libertador*) has anchored in Port of Spain without any objection or difficulty on the part of the colonial authorities. Venezuela protested at the time to your legation on account of the acts of hostility that the ship in question had perpetrated on the coast of the Republic against the Government and to the injury of general security. She protested later against the attitude of indifference or tolerance shown by the governor of Trinidad in the face of the revolutionary movements prepared in the territory of the island against authorities constitutionally established in the eastern states. To-day, in conformity with the special direction of the constitutional President of the Republic, I put forward in this note, with all the energy that the case calls for, a new protest against the unusual fact of the colonial authorities, after the measures taken toward the legation, having harbored the steamer without taking those measures into consideration in order to judge with reference to the course of events.

Whilst begging you earnestly to be good enough to note this new protest of the Government of the Republic, and of the grave circumstances that calls it forth, I present, etc.

J. R. PACHANO.

[Inclosure 2.]

*Mr. Haggard to General Pachano.*

CARACAS, March 25, 1902.

M. LE MINISTRE: I have the honor to acknowledge the receipt of your excellency's note of yesterday's date, protesting against the presence at Port of

Spain, without any objection on the part of the colonial authorities, of the "insurgent steamboat *Ban Righ* (*Libertador*)."

I have lost no time in reporting this to His Majesty's Government.

I avail, etc.,

W. H. D. HAGGARD.

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[Inclosure 3.]

*Mr. Haggard to General Pachano.*

CARACAS, March 25, 1902.

M. LE MINISTRE: With reference to your excellency's note of yesterday's date, I have the honor to bring to the knowledge of the Venezuelan Government that the governor of Trinidad has reported to me that on the 23d instant the Colombian man-of-war *Bolívar*, late the *Ban Righ*, had arrived at Port of Spain.

I avail, etc.,

W. H. D. HAGGARD.

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*Mr. Haggard to the Marquess of Lansdowne—(Received April 24).*

No. 81.]

CARACAS, March 30, 1902.

MY LORD: I have the honor to inform your lordship that I have received a dispatch from the governor of Trinidad, which shows, by reports from the collector of customs and the deputy inspector-general of police, that there does not appear to be any foundation for a statement made by the Government of Venezuela that armed expeditions against the peace of that country had been dispatched from Trinidad with the tolerance of the governor.

I have informed General Pachano accordingly, and have assured his excellency that the police of Trinidad had received instructions to keep every place frequented by Venezuelans under observation, and that the water police, who patrolled from 6 p. m. to 6 a. m., had no knowledge of any armed parties having left Trinidad for Venezuela or any other place.

I have, etc.,

W. H. D. HAGGARD.

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*Mr. Haggard to the Marquess of Lansdowne—(Received April 24).*

[Extract.]

No. 82.]

CARACAS, April 1, 1902.

On the receipt of your lordship's telegram of the 26th ultimo I immediately addressed to the Venezuelan Government the note, of which I have the honor to inclose a copy.

I received the reply, of which I have the honor to inclose a translation, asking by what process and since what date the vessel had entered the Colombian navy.

I have the honor to inclose my reply to this note, stating that I had no information on that subject.

[Inclosure 1.]

*Mr. Haggard to General Pachano.*

CARACAS, March 27, 1902.

**M. LE MINISTRE:** In my note of the 24th instant I had the honor of informing your excellency that I had lost no time in reporting to His Majesty's Government the protest of the Venezuelan Government against the presence at Port of Spain, without any objection on the part of the colonial authorities, of the "insurgent steamboat *Ban Righ (Libertador)*."

I am now instructed by His Majesty's Government to inform that of Venezuela that as it would seem that that ship is now, ostensibly, at least, a Colombian man-of-war, and is flying the Colombian national flag, they can not properly direct any action against her.

Any such action would be an act of war against Colombia, if she be a Colombian public vessel.

I am further to state that His Majesty's Government incur no liability for, nor for any depredation committed by, the ship in question. The circumstances, moreover, under which she was allowed to leave England are of such a character that the Venezuelan Government can not properly put forward any charge of negligence.

If, since her transfer at Martinique, she has made any use of the British flag, this has been simply a wrongful act, for which His Majesty's Government are in no way responsible.

On the other hand, His Majesty's Government will not allow the ship to use a British port as a base of hostile operations against Venezuela, and the governor of Trinidad has therefore been instructed not to allow her to coal, and to request her to leave the port immediately.

I avail, etc.,

W. H. D. HAGGARD.

[Inclosure 2.—Translation.]

*General Pachano to Mr. Haggard.*

CARACAS, March 29, 1902.

**M. LE MINISTRE:** On the 25th instant your excellency informed this Department that you had received news from his excellency the governor of Trinidad of the arrival at Port of Spain of the ship *Ban Righ* as a Colombian man-of-war and with the name of *Bolívar*.

On the 27th your excellency addressed me another note on a similar subject, but in order to be able to consider the note the Government of Venezuela must know by means of what process and since what date the English ship in question entered the Colombian fleet.

I beg your excellency most urgently to communicate this information to me promptly, and in the meanwhile I do myself the honor of offering you new proofs of my consideration, etc.,

J. R. PACHANO.

[Inclosure 3.]

*Mr. Haggard to General Pachano.*

CARACAS, March 31, 1902.

**M. LE MINISTRE:** In your excellency's note of the 29th instant you inquire by what process and since what date the steamboat to which your note refers entered into the Colombian service.

In my note of the 27th March I stated that I had been "instructed by His Majesty's Government to inform that of Venezuela that it would seem that that ship is now, ostensibly ('ostensiblement') at least, a Colombian man-of-war."

I have the honor to inform your excellency that I have no further information on this subject than that which has already been communicated to the Venezuelan Government.

I avail, etc.,

W. H. D. HAGGARD.

*Colonial office to foreign office—(Received May 14).*

No. 83.]

DOWNING STREET, May 13, 1902.

SIR: I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquis of Lansdowne, the accompanying copy of two dispatches, dated the 17th and 24th April, received from the governor of Trinidad, together with inclosures on the subject of the conduct of the Venezuelan consul in connection with the dispatch of vessels for Venezuela.

Mr. Chamberlain would be glad to receive the Marquis of Lansdowne's observations on the conduct of Señor Figueredo, and on the propriety of refusing him an exequatur, as recommended by the governor.

I am, etc.,

C. P. LUCAS.

[Inclosure 1.]

*Governor Sir A. Moloney to Mr. Chamberlain.*

GOVERNMENT HOUSE, *Trinidad*, April 17, 1902.

SIR: In continuation of the records on the subject of the fees charged by the consul for Venezuela I have the honor to transmit herewith, for your information, a copy of the correspondence which has recently taken place with regard to the conduct of Señor Figueredo in connection with the dispatch of vessels from this port for Venezuela.

A copy of this further correspondence has been forwarded to the British minister at Caracas.

In this connection it is well to remember that His Majesty's exequatur has not yet issued in favor of Señor Figueredo, and the facts reported illustrate that he is not here a persona grata, so the question is worthy of consideration whether his conduct and attitude are not such as to justify his removal and restoration to his country.

I have, etc.,

ALFRED MOLONEY.

[Inclosure 2.—Extract.]

*Governor Sir A. Moloney to Mr. Chamberlain.*

GOVERNMENT HOUSE, *Trinidad*, April 24, 1902.

I invited Mr. Naysmith to wait upon me at my office, and there he made a statement, of which I inclose a copy. This statement he supplemented by the production of the original clearances, receipts for duty, and other documents



specified, all signed by Señor Figueredo, and copies of which I have retained, also an order initialed by Señor Figueredo directing the return to him of the triplicate clearance, which documents conclusively bar out Mr. Naysmith's statements.

I further inclose a copy of a letter which I have addressed to the Venezuelan consul (Señor Figueredo) on the advice of the attorney-general.

In view of the irregular conduct of Señor Figueredo, I think it inadvisable that His Majesty's exequatur should be issued to him.

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[Inclosure 3.]

*Colonial secretary, Trinidad, to Señor Figueredo.*

COLONIAL SECRETARY'S OFFICE, *February 15, 1902.*

SIR: I have the honor to acquaint you that his excellency the governor has been informed of a communication which you have made to M. Julio C. Lyon to the effect that you will not accept any dispatch of vessels from him or from any person acting as agent for him or for his house of business.

His excellency considers this a most unusual course of procedure, and directs me to inquire by what authority you have interfered with the trade of M. Lyon, who is a merchant of this community.

I have, etc.,

C. C. KNOLLYS.

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[Inclosure 4.]

*Señor Figueredo to Colonial Secretary, Trinidad.*

TRINIDAD, *February 17, 1902.*

SIR: I have the honor to inform you that I am in receipt of yours dated the 15th instant, and I beg to reply as follows:

It is a fact that by order of my Government, and naturally with their authority, I notified M. Julio C. Lyon that this consulate will not take notice of any vessels dispatched by him or by any of his agents. The consulate of Venezuela is a Venezuelan officer, governed by the laws of the country he represents and by superior orders he receives, and in which it is agreed that M. Julio C. Lyon, although a resident in this island and in business here, is a Venezuelan, trades with Venezuela, and in Venezuelan vessels.

In the event of M. Lyon presenting himself to dispatch a vessel under a foreign flag, the undersigned will approach the harbor master of this port to inform him that he will not refuse to dispatch such a vessel, but certainly through the intervention of Mr. Lyon, who is not a persona grata to my Government.

I hope in this letter I have answered the question you have put to me at the request of his excellency the governor.

I have, etc.,

C. B. FIGUEREDO,  
*Consul for Venezuela.*

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[Inclosure 5.]

*Colonial Secretary, Trinidad, to Señor Figueredo.*

COLONIAL SECRETARY'S OFFICE,  
*Trinidad, March 19, 1902.*

SIR: I am directed by the governor to acknowledge the receipt of your letter of the 17th ultimo in answer to the inquiry I had the honor to address to you on the previous 15th, under his direction.

His excellency is quite alive to, and fully appreciates, the fact that a consul is not, in respect of his official acts, subject to the control or authority of the Government to which he is accredited and within which he represents his country, and fully understands that any inquiry made to you was in no way an assertion of any claim whatever to such interference.

Whilst it has been and always will be the governor's desire and intention to respect fully the position of a consul, at the same time it is well that you should thoroughly understand that his excellency is not prepared to recognize under any circumstances the right of any consul to discriminate in his official treatment of merchants, whatever their nationality, by imposing disabilities in any way or direction as regards facilities for obtaining consular signatures to documents, or as against any vessels, of whatever flag, requiring in their commercial intercourse clearance from the ports of this colony.

The inquiry addressed to you was one which his excellency deemed necessary so as to do full justice to the situation, that the position indicated in the previous paragraph should be clearly understood and fully maintained, and, in order that the governor might find himself able to so deal with it, I was directed to invite from you by what authority you had addressed to M. Lyon your letter of the 28th January last, declining to accept dispatch of vessels from that merchant.

Your answer was to the effect that you did so by order of your Government. May I now ask you to favor me, for the convenience of the Government, with a copy of the letter or the order of the Government of Venezuela in obedience to which you acted in announcing your intention to refuse dispatch in the instance referred to.

Whilst your remark that your proposed prohibition against M. Lyon doing business with Venezuela was not intended to apply to vessels in his care sailing under any but the Venezuelan flag has been noted, I am further to ask whether that distinction is also drawn by order of your Government, as his excellency the governor is unaware of and unprepared to recognize any consular right to refuse arbitrarily to a particular merchant clearance from these ports to vessels sailing under their flag?

I have, etc.,

C. C. KNOLLYS.

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[Inclosure 6.]

*Señor Figueredo to colonial secretary, Trinidad.*

TRINIDAD, *March 21, 1902.*

HONORABLE SIR: I have the honor to acknowledge the receipt of your kind letter, dated the 19th instant, with reference to M. J. C. Lyon; and, in reply, I would ask you kindly to inform his excellency the governor that by the first mail I will send to my Government the letter referred to; and with regard to the copy of the official order which I received not to accept in this consulate the dispatch of vessels by M. J. C. Lyon, as I do not consider myself authorized to furnish copies of documents addressed to me by my Government in my capacity as consul, I will apply for authority for this, although the request implies a doubt as to the veracity of my word when I first communicated to M. Lyon, and then to his excellency the governor, that I acted on the instructions of my Government.

I have, etc.,

CARLOS B. FIGUEREDO,  
*Consul for Venezuela.*

[Inclosure 7.]

*Collector of customs to colonial secretary, Trinidad.*

MARCH 26, 1902.

HONORABLE COLONIAL SECRETARY: 1. The manager of the Orinoco Shipping and Trading Company has furnished me with the following documents, which I submit for his excellency's information:

(1) Complaint alleging habitual and undue detention of the company's steamer *Bolivar*; and

(2) Extracts from the laws governing Venezuelan consuls.

2. This company was British and is now American, and the vessel in question, in compliance with the terms of the company's engagements with the Venezuelan Government, trades under the flag of that Republic.

R. M. MCCARTHY.

[Inclosure 8.]

*Declaration of the Orinoco Shipping and Trading Company.*

The hour of the departure of the steamer *Bolivar* is always publicly announced, and is fixed as late as possible for the convenience of local merchants, without exposing the steamer to the risk of losing the tide on the bar of the Macareo Channel. The consequences of missing the tide are a delay of twelve hours in the arrival of the steamer at Ciudad Bolivar, heavy expenses for overtime and Sunday work at customs, and extra labor and inconvenience to the merchants of that port, who have to rush their correspondence and shipments for the return of the steamer. Such risks are greater at this season of the year, when the Orinoco is at its lowest depth. The present consul for Venezuela has, except on two special occasions, habitually delayed the steamer's departure, sometimes for more than two hours. The matter has at length become so serious that the company considers itself justified in breaking the silence it has hitherto maintained and recording the particulars of the delay in the last dispatch, that of Wednesday, the 19th March instant.

Up to that date it had been the rule of the company to lodge the dispatch papers with the consul the day previous to the departure of the *Bolivar*, but, finding that the consul never gave them any attention until after the hour fixed for the departure of the steamer, the custom was discontinued, and the laws of Venezuela governing these matters were carefully complied with. On the occasion mentioned the papers were sent to the consul at 1 p. m. on the date mentioned, accompanied by a note to the consul's secretary reminding him that the hour of departure had been announced for 1.30 p. m. At 2.20 the company's messenger, who had been instructed to wait for the dispatch, telephoned that the consul had just returned to this office, and that the papers could not be ready before 3.30. The manager of the company's dispatch department, Mr. John Wharton, thereupon went over to the consulate, in company with the purser of the *Bolivar*, and protested to the secretary against the unnecessary delay. He declares, and will give evidence to that effect, that he himself saw that all the papers were ready and only awaiting the consul's signature—a matter of, at the most, ten minutes. Mr. Wharton thereupon interviewed the consul himself, and protested to him against the delay, requesting him to consider the expense which such delay caused the company, and reminding him also of the risk the steamer ran of losing the tide on the bar. The consul thereupon agreed to give the dispatch for 3 p. m., and Mr. Wharton returned to his office, where he waited until 4.15 p. m., the hour at which the dispatch finally reached the company. The

messenger had been kept waiting the whole time, and declares that he lost not a moment in going from the consulate to the company's office.

Although it does not bear directly upon the matter in question, yet it may be desirable to declare that the company, by its contract with the Venezuelan Government, is declared exempt from payment of all national imports (which include consular charges); yet, so as never to give cause for any delay in the dispatches, the company has always paid without demur the consul's charges. Notwithstanding this, however, the consul systematically delays the dispatch of the *Bolívar*, thereby not only causing injury and expense to the company, inconvenience to the merchants of Ciudad Bolívar, and, indirectly, to the commerce of this colony, but by so doing signally fails to observe the law of Venezuela which governs such matters. We append the law in question and a true translation of the same.

THE ORINOCO SHIPPING AND TRADING COMPANY (LIMITED),  
T. A. TURNER, *Manager*.

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[Inclosure 9.—Translation.]

*Extract from the Código de Hacienda, Section V.*

Consuls can not delay the dispatch of documents presented to them in accordance with this ordinance, during official hours, without being responsible for any damages incurred by the interested parties owing to such delay.

The official hours for dispatching in the consulates of Venezuela shall be the same as those of the public offices in the place where the consulates are situated.

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[Inclosure 10.—Translation.]

*Extract from the penal code, section 3, Chapter IV.*

ARTICLE 181. Every Government official who, under any pretext whatsoever, whether it be that of silence, obscurity, contradiction, or insufficiency of the requirements of the law, omits or refuses to perform any duty connected with his department, shall be liable to a fine of from 50 to 1,500 bolívars.

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*Extract from the fiscal code, law 16, chapter I, section 5.*

"ARTICLE 38. In ports where there are no consular agencies of the Republic, the documents required by this ordinance shall be presented to the consular agent of a friendly nation, and in cases where there are none such, or where the latter may not be disposed to certify such documents, then they may be certified by two merchants, whose signature shall be witnessed by a Government official.

"ARTICLE 39. Consuls can not delay the dispatch of documents presented to them in accordance with this ordinance, during official hours, without being responsible for any damages incurred by the interested parties owing to such delay."

The official hours for dispatching in the consulates of Venezuela shall be the same as those of the public offices where the consulates are situated.

The consul is said to have declared that in refusing to dispatch M. Lyon's vessels, that he did so in obedience to direct private instructions from his chief, General Castro. General Castro has no power, either as dictator or

constitutional president, to refuse to dispatch mercantile vessels. He might do so as dictator by the issue of a public decree, but not by private instructions. Following is the law on the matter :

[Extract from the constitution of the United States of Venezuela, section 3.—Translation.]

*Of the attributes of the President of the United States of Venezuela.*

"ARTICLE 76. To order the execution of the laws and decrees of the National Congress within fifteen days of receiving such laws, and to take measures for enforcing the compliance and execution of such laws."

Amongst the laws referred to are those given above.

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[Inclosure 11.]

*Colonial secretary, Trinidad, to Señor Figueredo.*

COLONIAL SECRETARY'S OFFICE,  
Trinidad, April 2, 1902.

SIR: I am directed by his excellency the governor to inform you, in continuation of my letter of the 19th ultimo, to which I have as yet had no reply, that the manager of the Orinoco Shipping and Trading Company (Limited) has furnished a statement in which he declares that—

Full publicity is always given to the hour of departure of the *Bolívar*, which is fixed as late as possible for the convenience of merchants, but with due regard to taking the tide on the Macareo Bar, which is a matter of considerable importance, as losing the tide at the bar causes great inconvenience and expense. The risk is greater at this period of the year, owing to the shallowness of the Orinoco. The present consul for Venezuela has, except on two special occasions, habitually delayed the steamer's departure.

In connection with the delay of the steamer on the 19th March, the manager of the company further declares :

"The laws of Venezuela were carefully complied with in the preparation and lodging of the papers. They were sent to the consul at 1 p. m. on the day named, accompanied by a note of the hour (1.30) announced for departure. The messenger waited until 2.20, when Mr. Wharton went to the consulate and saw the consul, who promised to have the papers ready by 3 p. m. They were, however, not received till 4.15."

The declaration concludes by a statement that although by its contract with the Venezuelan Government the company is exempted from payment of national imports (which include consular charges), such charges have always been paid without demur.

In connection with the above the company draws attention to the Penal Code of Venezuela, section 3, Chapter IV; also the Fiscal Code, Chapter I, section 5; Also the constitution of the United States of Venezuela, section 3.

I have, etc.,

C. C. KNOLLYS.

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[Inclosure 12.—Translation.]

*Señor Figueredo to Governor Sir A. Moloney.*

PORT OF SPAIN, April 5, 1902.

SIR: In answer to your letter, which, by your excellency's order, the honorable the colonial secretary has forwarded to me, I have the honor to inform

your excellency that I regret very much that through an error on the part of the agent of the Orinoco Shipping and Trading Company, that that gentleman should molest your excellency's superior attention even to the extent of carrying a complaint to your excellency which concerns only the Venezuelan Government. If at any time the undersigned should commit a fault in the discharge of his duties and in connection with the laws of the country that he represents. It is prescribed in those very laws the penalty that his fault deserves, and the authorities therein cited who can and ought to take cognizance of any violation of the law.

The Orinoco Shipping and Trading Company at times fall to fulfill their contract, and also in the regulations in the dispatch of their vessels; nevertheless, it has never yet occurred to the undersigned to trouble the attention of your excellency denouncing those faults and the violation committed by the company. Of these I inform the Venezuelan Government, and I leave them to decide what they think necessary. The accusation of the agent, through the letter of the honorable the colonial secretary, which I am now occupied in answering your excellency, places me in the position of informing your excellency of the following particulars. The authorities of Venezuela, with which the Orinoco Shipping and Trading Company has relations, detain the leaving of the steamboats not only for an hour or two, but for days, whenever it is necessary for the interest of the peace of the country; nevertheless, it has never occurred to the company to protest nor carry their grievances with such motive before his excellency the governor of Trinidad, but on the contrary, submit to the order of the authorities without ever protesting, but to the contrary, flattering the power. But as the Venezuelan consul resides in Trinidad, a foreign country, and is a foreigner in it, that this and other companies show themselves strong and take care of their rights, but never of their duty, nor do they lose time in accusing the consul, and mark him as a violation of the laws that they are the first ones not to observe.

A copy of your excellency's letter, which I have answered, likewise this one, I shall forward to my Government.

I have, etc.,

C. B. FIGUEREDO,  
*Consul for Venezuela.*

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[Inclosure 13.]

*Minute by the collector of customs, Trinidad.*

HONORABLE COLONIAL SECRETARY: The manager of the Orinoco Shipping Company requests me to forward the inclosed letters in continuation of former correspondence. The consul's letter shows him to be an arbitrary person, and one with whom it must be difficult to do business amicably, but I have ventured to advise Mr. Turner in his own interest to give Señor Figueredo no shadow of an excuse for refusing facilities, and to suppress as far as possible all indications of resentment.

R. H. MCCARTHY.

APRIL 14, 1902.

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[Inclosure 14.—Translation.]

*Señor Figueredo to the manager of the Orinoco Trading and Shipping Company.*

TRINIDAD, April 7, 1902.

SIR: This consulate has taken note of the complaint, protest, or accusation against the undersigned with which you, as manager of above-mentioned com-



pany, have troubled the attention of his excellency the governor of this island, overlooking the fact that I, as consul for Venezuela, am solely responsible to the Government of Venezuela, and that it is before the latter superior authority that all complaints or protests regarding my consular acts should be made.

I notice that the company is supremely careful in regard to its own rights, but, at the same time, that it is equally careless with regard to compliance with the greater part of its obligations, above all, in regard to the dispatch of the *Bolívar*; wherefore I would have you know that here am I to compel you to comply with those obligations.

In the first place, the dispatch of the *Bolívar* must be brought to this office four hours before the time indicated for the departure of the steamer, and not at the last hour, as is your custom.

Furthermore, the company has no right to issue passenger tickets, except to such persons as present their baggage lists, duly authorized by me, and to persons—Venezuelans or foreigners—provided with passports, which are obligatory, the company being responsible for any failure to comply with these requisites and subject to the payment of the fine which may be imposed by the customs authorities of Ciudad Bolívar for such fault. This consulate has taken note of persons who on each voyage of the *Bolívar* have traveled without baggage lists or passports.

Amongst the papers of the vessel a letter should reach me, signed by the captain, notifying me of the date of the departure, whether in ballast or with cargo.

This consulate, furthermore, will not admit any document connected with the departure of the steamer which requires the signature of the captain when such document is signed by any other person than the captain, and those which the law requires to be signed before the consul will have to be signed by the captain in the presence of the writer.

I hereby notify the company that the captain must agree with the undersigned as to the hour in which such signatures shall be attached, inasmuch as the multitudinous and diverse occupations inherent to the post I occupy and the fulfillment of the orders of my Government, to which I have to attend, are reasons why the undersigned can not be always in office during dispatch hours, of which fact, if the company desire, they may complain to my Government.

I furthermore notify the company that the payment of consular fees must be made at the same moment that the consul delivers the ship's papers.

CARLOS B. FIGUEROA,  
*Consul for Venezuela.*

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[Inclosure 15.—Translation.]

*The manager of the Orinoco Shipping and Trading Company to Señor Figueroa.*

APRIL 12, 1902.

SIR: I beg to acknowledge the receipt of your communication dated the 7th instant, to which I have been unable to reply sooner because of the pressure of work due to the mails.

The "Codigo de Hacienda" does not anywhere stipulate that the papers connected with the dispatch of vessels are to be lodged at the consulate at any particular hour nor with any specified period of hours.

The law stipulates only the following:

"ARTICLE 38. In ports where there are no consular agents of the Republic, the documents called for by this ordinance shall be presented to the consular agent of a friendly nation, and in cases where there are none such, or where the

former may not be disposed to certify such documents, then they may be certified by two merchants, whose signatures shall be attested by a Government official.

"ARTICLE 39. Consuls or consular agents may not delay the dispatch of documents presented to them in accordance with this ordinance during official hours without being responsible for any damages that may be sustained by the interested parties by reason of such delay. The official hours for dispatching in the consulates of Venezuela shall be the same as those of the public offices of the place where consulates are established."

It is untrue that this company has ever issued passenger tickets without the previous production of the corresponding passport and baggage list; but even supposing that the company had so done, in every case it has been with the assent of the consul, because in every dispatch of the *Bolivar*, besides the ship's papers, the list of passengers taken from the company's ticket books is sent to the consulate.

The other formalities mentioned in your letter constitute the imposition of fresh obstacles inasmuch as they have no foundation in law, are contrary to the practice hitherto observed in this colony, and confirm in the most emphatic manner the complaints which this company has found it necessary to make to the executive, in order to demonstrate the obstacles which the consulate puts in the way of the regular and expeditious conduct of the mercantile interests of this colony.

I regret to be forced to the conclusion from your letter that so far from being disposed to modify the restrictions which you have imposed to the detriment generally of the trade of this colony and the grave inconvenience of this company's mail service, it is your intention to interpose still further obstacles.

Copies, together with faithful translations of this correspondence, are sent for the consideration of his excellency the governor of this colony.

I have, etc.,

T. A. TURNER.

[Inclosure 16.]

*Mr. H. R. Naysmith to colonial secretary, Trinidad.*

PORT OF SPAIN, April 18, 1902.

SIR: By virtue of my power of attorney for the Compagnie Générale des Asphaltes de France (Limited), and on behalf of the above company, whose registered office is at 19 A, Colman street, London, E. C., I beg to bring the following facts to your notice, and respectfully beg your protection from similar occurrences:

1. On the 9th April I informed Señor Carlos B. Figueredo, the Venezuelan consul in Trinidad, that I was desirous of dispatching the company's chartered British registered cutter or lighter *Euterpe* on the following Saturday, the 12th instant, for Guanipa, the company's concession in the Orinoco delta. The consul at first declared his inability to dispatch the boat on account of the fact that the port of Pedernales, where the boat should call to pay the customs dues, was in the hands of the revolutionists. I assured him that this was not the case, they having set out for Maturin on the 4th instant. He then promised to dispatch the boat whenever I was ready.

2. On presenting the necessary papers to the consul through my agent, he declined to grant the dispatch unless the sum of \$20, which he demanded for a passport on the occasion of the previous dispatch of the boat, was immediately paid, although he had previously assured me that this money should not be collected until the result of my inquiry in Caracas as to the legality of his claim was known. However, I consented to pay the \$20 under protest.

3. He then declined to grant the dispatch unless the full customs duties, which should be collected at a Venezuelan port, were paid to him here, in Trinidad, in advance. I objected to such an unprecedented demand, whereupon he not only declined to dispatch the boat, but also refused to give up my papers. This happened on Saturday, the 12th instant. My agent endeavored several times on Monday and Tuesday, the 14th and 15th instant, to induce him to change his decision, but without result, although I offered to leave the money on deposit with the consul on the understanding that if the revolutionists collected anything down the main it was to be deducted from the amount on deposit.

4. On Tuesday, the 14th instant, finding it impossible to get my boat away, and the 25 or 30 British laborers I have working on the concession running short of provisions, I was compelled to pay to the consul, at his office in Trinidad, the sum of \$159.88, the amount of duty recoverable at a Venezuelan port, in addition to \$19 for the necessary dispatch papers. Should the boat be met by any of the revolutionary party on its journey the probability is that they will demand the payment of duty also, or else seize the boat.

5. By order of the consul my papers were made out, with the destination left blank, he himself filling in the name Guanipa, an uninhabited spot of virgin forest, for which, by Venezuelan law, he renders himself liable to dismissal.

6. On granting the dispatch he told my agent that, there being no collector of customs at Guanipa, on the return of the boat the papers were to be given up to him. In this way he would become possessed of all the papers, which are always made out in triplicate, viz, one for the consul himself, one which he is supposed to send to the minister of finance in Caracas, and the one which the collector of customs keeps. If I refuse to give up this last batch of papers the probability is that he will refuse to dispatch our boat again.

This, sir, being the state of affairs which renders it extremely difficult for us to carry on our operations, I respectfully beg that you will afford us such protection as will free us from such high-handed proceedings on the part of the Venezuelan consul in future.

E. R. NAYSMITH,  
*Attorney for the Compagnie Générale  
des Asphaltes de France (Limited).*

[Inclosure 17.]

*Examination of Mr. E. R. Naysmith.*

Present: His excellency the governor, the honorable the colonial secretary, the honorable the attorney-general, Mr. E. R. Naysmith.

His excellency informed Mr. Naysmith that he had asked him to attend that day in order that the attorney-general might have an opportunity of talking over with him the circumstances surrounding certain representations which he (Mr. Naysmith) had made against the Venezuelan consul in Port of Spain, and of which the attorney-general desired to get confirmation. The attorney-general would therefore examine Mr. Naysmith on the papers.

Examined by the attorney-general, Mr. Naysmith said:

I am an agent of the French company, the Compagnie Générale des Asphaltes de France (Limited), a position which I have held since the 25th June last year, and for whom I hold a power of attorney, which has been duly registered. My company is in lawful possession of a mine which is situate at Guanipa, near

Pedernales, Venezuela. The deeds proving this have been registered at Maturin, which is the capital of the State, according to the law of Venezuela, and my company is now working in the mine, using the labor of British subjects. I am a British subject. Twice since we acquired the property I have had occasion to dispatch boats with provisions to the mine. Before we acquired the property, and when we were prospecting in the district, on one occasion I sent a chartered boat down, and once or twice went down myself in our steam launch, taking provisions. This was during last year, and the Venezuelan consul always gave me similar clearances. My port of entry was Guiria, which has lately been in the hands of the Venezuelan revolutionists. There is a custom-house at Pedernales, to which the consul could give a dispatch, but only if my vessel was in ballast—when I had cargo I had to go to Guiria. Previous to my last voyage I had a dispute with the consul. It was concerning my passport, and the matter was referred to the capital—Caracas. After writing across my passport that the money in dispute (\$20) was not paid and was to be collected when the result of my protest was received before he would allow me to proceed on my voyage, the consul demanded the \$20 in dispute, which I paid under protest. He then told me that I must pay the duty on my consignments. I paid this, and received a receipt for the amount (\$159.88). I have no objection to allowing this receipt to be attached to the governor's minute for a time. The receipt has only a consular stamp, and I was not aware that I rendered myself liable to a small penalty for accepting it without a Trinidad stamp being on the receipt. Guiria was at that time in the hands of the revolutionists, but I hear that it is now recaptured by the Government. Being in the hands of the revolutionists, the consul refused to make me out a clearance for Guiria, and I thereupon suggested Pedernales. His reply was that the revolutionists were in power in that place also, but I claimed that he could not refuse me dispatch for it, as I had brought news up that Pedernales had been evacuated by the revolutionists. I know this, because on the way down I had been kept back at Pedernales by the revolutionists, but coming back I found no one in charge of the custom-house, and had to make out my own papers when I got back to Port of Spain. However, the consul refused to dispatch me for either Pedernales or Guiria, as he said he knew the revolutionists were there. He then declined to grant the dispatch unless the full customs duties which should be collected at a Venezuelan port were paid to him here in Trinidad. The papers are in triplicate, and he wanted to obtain possession of the three copies, but this I would not allow, as it was necessary that I should have them to prove that I had paid the money.

I left England in June last year, and have been in Trinidad since July, with the exception of one or two journeys out of the island on business. My Trinidad address is 148 Frederick street, Port of Spain, where I board with Mr. Devenish. At present I use a room there as an office. My company's registered office is at 19A Coleman street, London.

I paid the money under the circumstances mentioned by me in my letter to the Government. I paid it through M. Giaonetti, one of the clerks of the Orinoco Asphalt Company. I drew M. Giaonetti a check for \$210, out of which he paid the fees.

In reply to his excellency, Mr. Naysmith said the reason the consul gave for demanding the duty here was that he was afraid that he might come across revolutionists, who would collect it.

By the attorney-general: The consul simply refused point-blank to grant my dispatch unless I paid, and he made the papers out for Guanipa, after asking me to leave the destination blank. Guanipa is virgin forest, and so I suppose it was a sham clearance.

By his excellency: There is no representative of the Venezuelan Government

at Guanipa, and that was the reason I asked him to return the papers. The only settlement there is my pitch works, which are in a clearing in the forest. The consul did not explain why he inserted Guanipa after telling me to leave the papers blank and he would fill the name in. He merely said that I could go straight down to Guanipa. He had written on the papers the names of the commandante, but there was no such person at Guanipa; there is not even a Government official of any kind, the place being, except for the ranches I have built for my men, uninhabited and virgin forest.

His excellency thanked Mr. Naysmith for his attendance, and he then withdrew.

APRIL 22, 1902.

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[Inclosure 18.]

*Colonial Secretary, Trinidad, to Señor Figueredo.*

COLONIAL SECRETARY'S OFFICE, April 23, 1902.

SIR: I have the honor to request that you will be good enough to state, for the information of his excellency the governor:

1. Whether on Tuesday, the 14th instant, you received from the agent clearing the vessel *Euterpe* a sum of \$159.88 for customs duties payable on the cargo of such vessel to the Government of Venezuela? His excellency is advised that, if so, you have gravely exceeded your powers, and assumed the right to commit an act of sovereignty on British territory, and his excellency would be glad to know by virtue of what authority the money was so received.

2. Whether it is true that you made out a clearance for the same vessel. *Euterpe*, directed to the "commandant of Guanipa;" whether Guanipa is a port of entry in Venezuela, and whether there is a commandant or any other officer of the Republic at that place; and, if there is no such person, then for what purpose and by what authority you issued such clearance?

3. Whether it is true that you required the captain or other agent of the said *Euterpe* to return to you the triplicate copy of the clearance so granted; and if so, for what purpose and by what authority?

In asking you these questions, and with reference to your remarks in your letter of the 5th April last, that the Venezuelan authorities are the proper persons to take cognizance of any irregularities committed by their officers, I am directed to inform you that his excellency the governor does not claim to exercise any direct control over your actions as consul for Venezuela; but, on the other hand, it is his duty to satisfy himself that the affairs of the consulate within the colony are conducted according to international usage and due legality.

I venture to ask for the favor of an early reply to this communication.

I have, etc.,

C. C. KNOLLYS.

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*Memorandum respecting the steamship Ban Righ or Bolivar.*

No. 84.]

In answer to a question of Mr. Channing's in the House of Commons on the 20th January, Lord Cranborne explained the circumstances in which the *Ban Righ* was allowed to leave the port of London after detention and examination of her papers and cargo. The

Colombian minister at this court had stated that the vessel was intended for the service of his Government, and as no state of war existed between Colombia and any other power there was no reason for detaining her.

She left these shores registered as a British ship, her port of registry being Aberdeen, the date of register the 26th October, 1888. Flying the British merchant flag, she proceeded direct to Antwerp, where she took in a large supply of arms, ammunition, and coal. On the 30th November, 1901, she sailed out of the Scheldt and reached Martinique on the 22d December. It was while she was here that the Venezuelan Government issued a proclamation on the 30th December declaring her to be a pirate, and authorizing her pursuit and capture by public or private ships armed as privateers, whether belonging to Venezuela or to any other nation. They offered the vessel and her cargo as a prize to her captor, together with a reward of £2,000.

The *Ban Righ* was still further fitted out at Martinique, took on board the Venezuelan revolutionary general, Matos, and was handed over to the Colombian Government on the 1st January, 1902. On the 2d January she was transferred at sea by bill of sale to General Matos.

Between this and the 23d March we have but little trustworthy information as to her movements, though we know that she was at Savanilla on the 12th January, flying the British merchant flag, and at St. Lucia on the 28th February, flying the Colombian national flag. It appears, moreover, that on various occasions she committed hostile acts against Venezuela. On the 7th February the collector of customs and registrar of shipping at Aberdeen received a note from Mr. de Paula, the registered owner, stating that he had sold the vessel on the 2d January. The registry of the vessel at Aberdeen was consequently closed on the 7th February. On the 23d March she arrived at Trinidad, flying the Colombian national flag and holding a commission from the Colombian Government. There she has been ever since with her machinery disabled.

As the *Ban Righ* was, ostensibly, at least, a Colombian man-of-war, no action could be taken against her by His Majesty's Government, who were, moreover, in no way liable for any depredation committed by her. The circumstances in which she was permitted to leave this country were such that no charge of negligence could properly be put forward by the Venezuelan Government against His Majesty's Government, and any use made of the British flag subsequent to her transfer was merely a wrongful act, for which His Majesty's Government were not responsible. As it appeared, however, that the vessel was carrying on hostile operations against the Venezuelan



Government, she was not to be allowed to coal or in any way fit out in British ports, or use any British port as a base for her operations.

It was, however, decided that the *Ban Righ* should not be allowed to refit in Trinidad unless satisfactory assurances were received that she was a Colombian public vessel, and that she would not in the future be allowed to engage in irregular hostilities against Venezuela. Instructions were accordingly telegraphed to Mr. Welby on the 2d April to inform the Colombian Government in this sense, but owing to the interruption of telegraphic communication with Bogota, these instructions only reached His Majesty's minister on the 27th April, and no reply has yet been received.

It has been since decided that until the assurances referred to above had been received from the Colombian Government permission should not be granted for a British ship to take arms and ammunition from the *Ban Righ* to Cartagena. That there would be no objection to a Colombian man-of-war's removing the *Ban Righ* in tow or taking her arms and ammunition on board.

Repeated protests against the action of His Majesty's Government in allowing the vessel to leave the port of London, and also against the action of the Trinidad authorities, have been received from the Venezuelan Government, but Mr. Haggard was instructed by telegram on the 26th March to inform them that there was no liability on the part of His Majesty's Government for any depredation committed by the vessel.

FOREIGN OFFICE, *May 19, 1902.*

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*Colonial office to foreign office—(Received May 30).*

No. 85.]

DOWNING STREET, *May 29, 1902.*

SIR: I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquis of Lansdowne, with reference to the colonial office letter of the 13th instant, the accompanying copies of two dispatches and a telegram from the governor of Trinidad on the subject of the conduct of the Venezuelan consul at Port of Spain.

In view of the improprieties of which Señor Figueredo has been guilty, Mr. Chamberlain would be glad if Lord Lansdowne, should he see no objection, would instruct Mr. Haggard to present a protest to the Venezuelan Government against the action of the consul in hampering legitimate trade between Trinidad and Venezuela, in improperly demanding the payment in Trinidad of Venezuelan customs duties, and in arrogating to himself diplomatic functions to which he has no title; and to inform that Government that unless

satisfactory assurances are forthcoming as to Señor Figueredo's future conduct His Majesty's exequatur will not be issued to him.

I am, etc,

C. P. LUCAS.

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[Inclosure 1.]

*Governor Sir A. Moloney to Mr. Chamberlain.*

GOVERNMENT HOUSE,  
Trinidad, May 2, 1902.

SIR: In continuation of my dispatch of the 24th ultimo on the subject of the complaint of Mr. E. R. Naysmith against the conduct of the consul for Venezuela, I have the honor to transmit herewith, for your information, copy of the reply which Señor Figueredo returned to my colonial secretary's letter of the 23d April, which formed inclosure No. 4 to my dispatch above quoted.

I have, etc.,

ALFRED MOLONEY.

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[Inclosure 2.]

*Señor Figueredo to colonial secretary, Trinidad.*

TRINIDAD, April 25, 1902.

SIR: In reply to letter from the honorable the colonial secretary, dated yesterday [? April 23], and which I had the honor of receiving to-day, I can inform your excellency that it is a fact that on the 14th instant I dispatched for Guanipa the lighter *Euterpe*, with provisions for the employees of the "Compagnie Générale des Asphaltes de France," collecting the fixed duties that said provisions were liable at their entry in Venezuela.

I deeply regret with what frequency your excellency inquires and calls upon me to answer for my consular acts, of the right with which I am assisted, and of the official source from which my said actions are derived, compelling me in each case to answer your excellency that it is the Venezuelan Government to whom they ought to carry their complaints and protests or accusations, and the particulars of the injuries caused to trade by my consular acts, and to whom they have no right to make.

Your obedient servant,

CARLOS B. FIGUEREDO,  
Consul for Venezuela.

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[Inclosure 3.]

*Governor Sir A. Moloney to Mr. Chamberlain.*

GOVERNMENT HOUSE,  
Trinidad, May 7, 1902.

SIR: In continuation of my dispatch of the 24th ultimo, I have the honor to transmit herewith, for your information, copies of further correspondence with the consul for Venezuela (Señor Figueredo).

I have, etc.,

ALFRED MOLONEY.

[Inclosure 4.]

*Señor Figueredo to Governor Sir A. Moloney.*

APRIL 22, 1902.

**EXCELLENT SIR:** The town of Guiría, having been reoccupied by the forces of the constitutional Government of Venezuela, and among other revolutionary correspondence taken by the victors figures seven letters from M. M. A. Matos, which can be proved that the said M. M. A. Matos directs, formulates, and helps, from the British island of Trinidad, the existing revolution against the legal Government of Venezuela.

That M. M. A. Matos, recognized chief of the said revolution, sends from Trinidad arms, cartridges, and other war elements against the Government of a friendly nation to, Great Britain.

That M. M. A. Matos sends messages and revolutionary expeditions from this British Island of Trinidad to the Republic of Venezuela for such reasons, and calling on the neutrality laws and those that constitute the international rights, and submitting myself to the friendly treaty existing between Venezuela and Great Britain, I now ask formally, and with all respect due to your excellency and in the name of the Venezuelan Government, to invite M. M. A. Matos to leave the island immediately.

As it is to be expected if your excellency desires to see, in order to give effect to this petition, the original letters of M. M. A. Matos, I pray that your excellency should depute one of your excellency's confidential employees under whose care I can deliver them that they may be safely placed in your excellency's hands.

I have, etc.,

C. B. FIGUEREDO,

*Consul for Venezuela.*

[Inclosure 5.]

*Colonial secretary, Trinidad, to Señor Figueredo.*

COLONIAL SECRETARY'S OFFICE,

*Trinidad, April 30, 1902.*

**SIR:** I am commanded by his excellency the governor to acknowledge the receipt of your communication of the 22d instant in which you desire to draw his attention to what are referred to as acts of M. M. A. Matos and suggests to his excellency that that person be requested to leave the colony. You also offer to put at his excellency's disposal certain letters of the said M. M. A. Matos.

I am directed to inform you in reply that if it is desired to address any diplomatic representations to the Government of His Majesty, either in respect of matters arising within this colony or otherwise, the proper authority to be referred to is either His Majesty's minister at Caracas or His Majesty's secretary of state for foreign affairs in London; and that if you were directed to make the representations contained in your letter by the Government at Caracas his excellency will be obliged if you will kindly so advise that Government.

His excellency has no desire to peruse the documents said to be letters of M. M. A. Matos, referred to in your letter under acknowledgment.

In the opinion of his excellency it is not competent for a consular officer to make such a communication, or, indeed, any communication on any subject not within the scope of the special purposes for which consuls are appointed; and I am further to inform you that on whatever subject of a public nature communications are desired to be made to the Government of this colony by any

person, the rule is that they should be addressed to the colonial secretary, and directed to this office, for the preservation of uniformity of system, and for expedition in the transaction of business, a practice which is observed by all your colleagues. His excellency would be much obliged, therefore, if in future you would be good enough to conform to this rule.

I have, etc.,

C. C. KNOLLYS.

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[Inclosure 6.—Translation.]

*Señor Figueredo to Governor Sir A. Moloney.*

TRINIDAD, April 30, 1902.

SIR: I have the honor to forward to your excellency a copy of the war proclamation, which M. M. A. Matos, chief of the revolution against the legal government of Venezuela has, from the British Island of Trinidad, addressed to the Venezuelans.

With all due respect, and in view of this document being now before your excellency, I, in the name of the Venezuelan Government, protest in the most formal and energetic manner against the unusual and scandalous action which, from a foreign country as this colony, excites direct and foments the war against a friendly nation, as Venezuela; the revolutionists and their chief, M. M. A. Matos, enjoying all kinds of guarantees and immunities, which are not in good accordance with any of the precepts of neutrality nor with any of the laws and treaties by which all civilized countries are governed.

Your obedient servant,

CARLOS B. FIGUEREDO.

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[Inclosure 7.]

*Colonial secretary, Trinidad, to Señor Figueredo.*

COLONIAL SECRETARY'S OFFICE,

Trinidad, May 5, 1902.

SIR: I have the honor to acknowledge the receipt of your letter of the 30th April, forwarding copies of proclamations issued by M. M. A. Matos, and protesting in the name of the Venezuelan Government against his action.

I am directed by his excellency the governor to draw your attention to my letter of the 30th ultimo, and to say that the principles set forth in that letter apply also to the subject set forth in your letter under acknowledgment.

I have, etc.

C. C. KNOLLYS.

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[Inclosure 8.—Telegram.]

*Governor Sir A. Moloney to Mr. Chamberlain.*

GOVERNMENT HOUSE,

Trinidad, May 23, 1902.

Referring to my dispatch of the 24th April, British companies complain that Venezuelan consul insists on prepayment in Trinidad of duty on goods consigned to Venezuelan ports, refusing dispatch otherwise. Serious objection to practice. Threatened destruction of vessels in Venezuelan waters by Venezuelan ship of war now allowed use of harbor if disregarding.

Please telegraph instructions.

[Extract.]

*Mr. Haggard to the Marquess of Lansdowne—(Received June 5).*

No. 86.]

CARACAS, May 16, 1902.

I have the honor to inform your lordship that, having received a note from Gen. Diego B. Ferrer, announcing his appointment as minister for foreign affairs, I called upon him on the 12th instant.

The general himself shortly broached the subject of the relations between His Majesty's Government and that of Venezuela.

I gave him the story of the *Ban Righ* at length. In reply to a remark about the hostile attitude of the governor of Trinidad, I replied that I did not believe that there was any ground for such an idea; that it had been started and fostered by the Venezuelan consul in Trinidad, who on the one hand provoked the government there, and on the other excited and stirred up the Government here.

I had another interview with him yesterday, when he again reverted to the attitude of the government of Trinidad, and said that he was going to write to me on the subject, dwelling specially on the fact that General Matos was making Trinidad the base of his attacks on Venezuela—directing, indeed, the revolution thence. Would it not be possible to expel him?

I said that I felt sure that every possible means had been employed to prevent the colony from being the base of attacks on Venezuela. I expressed my strong doubt as to its having been so, and showed him that it was this very determination on the part of His Majesty's Government to prevent this which had prompted their action in the case of the *Ban Righ*.

I then urged him not to put forward any request which it would be impossible to grant, such as that of the expulsion of General Matos. I pointed out that the feeling with reference to the right of asylum in political cases was so deep rooted in England that it would be quite impossible for any colonial governor to act against it.

I pointed out that for more than half a century Trinidad had been the refuge of Venezuelans of all parties, one after another. Had he ever heard of any being expelled? To-day it was General Matos; to-morrow it might be some of the other party.

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[Extract.]*The Marquess of Lansdowne to Mr. Haggard.*

No. 87.]

FOREIGN OFFICE, June 9, 1902.

In a dispatch of the 9th March you transmitted a copy of a note from the Venezuelan Government acknowledging the receipt of the communication, in which you conveyed the reservations of His

Majesty's Government with regard to the British interests and British subjects connected with the Bolivar Railway, and stating that they can not deal with the case while the situation created by the steamship *Ban Righ* continues.

His Majesty's Government can not admit that there is any connection between the question of the Bolivar Railway and that of the *Ban Righ*, and can not acquiesce in the attempt of the Venezuelan Government to postpone dealing with other pending questions until that of the *Ban Righ* is disposed of.

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*Colonial office to foreign office—(Received June 12):*

No. 88.]

DOWNING STREET, *June 11, 1902.*

SIR: I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquis of Lansdowne, the accompanying copy of a dispatch with inclosures from the governor of Trinidad, calling attention to the destruction at Pedernales of the British vessel *In Time* by the Venezuelan gunboat *General Crespo*.

Mr. Chamberlain would be glad to be favored with Lord Lansdowne's views as to Sir Alfred Moloney's proposals.

I am, etc.,

C. P. LUCAS.

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[Inclosure 1.]

*Governor Sir A. Moloney to Mr. Chamberlain.*

GOVERNMENT HOUSE, *Trinidad, May 12, 1902.*

SIR: I have the honor to inclose copies of evidence which has been taken of the destruction at Pedernales by the Venezuelan gunboat *General Crespo* of the British vessel *In Time*. Copies of the inclosures have been forwarded to the British minister at Caracas.

2. I am informed that La Gualra is the only port now held by the Government of Venezuela, and Port of Spain has practically become the base of operations for the Venezuelan navy to carry on a war of retaliation against the insurgents. The *General Crespo* and other Venezuelan gunboats from time to time take in coal and provisions at Port of Spain, proceed to the neighboring coast for the purpose of bombarding defenseless villages and destroying trading vessels without regard to nationality, and then return here to prepare for another similar expedition.

3. I am of opinion than on the return of the *Indefatigable* the gunboat *General Crespo* should be taken possession of, and held until reparation has been made for the destruction of the *In Time* and other British vessels, as it is perfectly useless—indeed, waste of time—making money claims against the Venezuelan Government.

4. I am also of opinion that this port should be closed until further notice to the Venezuelan navy, as they are not carrying on the war in a civilized manner. On this point I draw attention to the inclosed evidence of Joachim Rodriguez. Some of the statements have been authenticated by eyewitnesses.



5. If you agree to these steps being taken, I shall be glad to receive instructions by telegram.

I have, etc.,

ALFRED MOLONEY.

[Inclosure 2.]

*Statement of Mr. J. F. Monnot.*

Mr. J. F. Monnot states that he is an American citizen, and, in ignorance of the fact that British law forbade foreign ownership of British shipping, he paid \$200 for half of the schooner *In Time*, owned by William Waith, and registered in Trinidad. He took no steps to have his title registered.

From the following persons he learned that the schooner was attacked by the Venezuelan gunboat *Crespo*:

The pilot of the *Crespo*, whose name he does not know, told him, on the night of Saturday last (3d instant), in Trinidad, that on the arrival of the gunboat in Pedernales orders were given to seize all craft in port, and this was done. The *In Time*, however, being badly tied, drifted with the steamer. She was fired upon with cannon, and, this falling, a party of men went from the *Crespo*, and with axes knocked part of the side out, and she sank. The pilot whose engagement terminated at Trinidad said this occurred on Tuesday, the 29th April.

This exactly confirmed what Mr. Monnot had heard on the previous day from the master of a small boat, whose name he had heard, but forgets, and who had been fired upon by the *Crespo* at Pedernales.

Mr. Naysmith, the engineer of an asphalt company near Pedernales, who arrived from that place on Sunday last (4th instant), also mentioned the incident as being spoken of in the district. Mr. Naysmith added that he saw the boat a wreck on a bank where she had been left by people who had recovered her.

The *In Time* left Trinidad with a cargo of provisions consigned to Bolivar; she returned from Bolivar in ballast to Pedernales, where she arrived and has since lain, her services not having been required.

William Waith, the registered owner, took her away from Trinidad as master. In Pedernales he left her and returned to Trinidad, leaving the vessel in the care of Jean Mozziconacci, Mr. Monnot's overseer in Pedernales, where he has mining property.

The pilot referred to also informed Mr. Monnot that after destroying, or attempting to destroy, the *In Time*, the *Crespo* came to Trinidad, returned to Pedernales, where Mozziconacci, who is a French citizen, was arrested and detained on board. The *Crespo* again came to Trinidad, when Mozziconacci requested permission to communicate with Mr. Monnot, whose business was left without supervision by his (the overseer's) arrest, but it was refused. Mr. Monnot has every reason to believe that the overseer is still on board the *Crespo*, but for the past month he has had no direct communication with him.

J. F. MONNOT.

APRIL 6, 1902.

[Inclosure 3.]

*Statement by Joachim Rodríguez.*

I, Joachim Rodríguez, master of the open boat *Dios de Salve*, hereby make oath and say, as follows:

About six days ago I was at Pedernales with my boat and saw the gunboat *Crespo* arrive about 11 a. m. Before anchoring she fired two shots (cannon)

into the village. After anchoring two boats' crews of about 20 men put off from the *Crespo* and seized two large boats and several smaller ones.

I saw the schooner *In Time* at anchor, the sails unbent. Two British subjects, whose names I do not know, left the schooner as soon as the *Crespo* fired at the village, leaving nobody on board. I was on shore, hiding about 500 yards from the *In Time*.

One of the *Crespo's* boats boarded the *In Time*, hoisted her anchor, and towed her to the *Crespo* and made her fast to that vessel. Several small boats were destroyed—all in the port, in fact; then the crew of the *Crespo* turned their attention to the schooner, a number of men going on board carrying implements, the exact nature of which I was too far away to identify. By their movements on board (making the motion of striking) I knew they were breaking up the vessel. Meanwhile she was being towed down the river by the gunboat, and gradually getting lower in the water. After going about a mile—the *Crespo* having cast her off about half a mile from the *Crespo's* original anchorage—the hull of the schooner disappeared, her masts remaining visible.

I did not see her again.

I am an American citizen and was born in Boston. I have been in Venezuela since I was 9 years old.

My own boat I, this deponent, had previously secreted in a creek, and she escaped destruction.

JOACHIM (his x mark) RODRIGUEZ.

Sworn at the court-house in the town of Port of Spain, in the island of Trinidad, the 7th day of May, 1902, the contents of this affidavit having been by me, deponent, and he having understood the same and having placed his mark thereto in my presence.

Before me.

ERNEST D. CLARK,  
Commissioner of Affidavits.

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[Inclosure 4.]

*Statement by William Waith.*

I, William Waith, of Port of Spain, domestic servant, having been duly sworn, do state:

In October, 1900, I bought for \$200, at Morowhanna, British Guiana (Barima district), the river boat *In Time*.

In the following January I converted her in Trinidad into a seagoing boat, at a cost of about \$500. The sides were raised by 22 inches, a keel supplied, 4 feet added to the length, and the vessel decked and schooner rigged. Mr. J. F. Monnot advanced me the money for these alterations, and I made him my manager. I partly repaid him by service as engineer on a launch; but as my account has not been balanced, I can not say how much I am still indebted to him.

In April, 1901, I took her with cargo to Ciudad Bolivar, Emanuel Danet acting as master. I left the schooner there in order to join Mr. Monnot's launch.

I have no personal knowledge of what occurred to the schooner afterwards, having left her management to Mr. Monnot.

I am still the registered owner, and have not transferred my rights to anybody.

WILLIAM WAITH.

Sworn to at the court-house in the town of Port of Spain this 10th day of May, 1902.

Before me,

L. H. LOVELACE,  
Commissioner of Affidavits.

[Telegram.]

*Mr. Dickson to the Marquess of Lansdowne—(Received June 13).*

No. 89.]

BOGOTA, May 7, 1902.

I did not receive until the 26th April your telegram of the 2d of that month. I am requested by the minister for foreign affairs to inform your lordship as follows:

1. That the *Ban Righ*, now *Libertador*, is regarded by the Colombian Government as their property; and

2. That so long as there is no state of war between Colombia and Venezuela the use of the vessel for the purpose of committing acts of hostility against Venezuela will not be authorized by them. They have further issued orders that the *Ban Righ* shall proceed to Colombian waters and be stationed in those waters.

I have received no further assurances from the Colombian Government. They trust, however, that His Majesty's Government will give permission for the vessel to refit in Port of Spain Harbor, and leave that port as soon as may be decided by the agents of the Colombian Government, and the minister for foreign affairs has asked me to obtain sanction for this.

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 [Extract.]
*Mr. Haggard to the Marquess of Lansdowne—(Received June 18).*

No. 90.]

CARACAS, May 31, 1902.

I have received on several occasions dispatches from the governor of Trinidad, inclosing complaints of the conduct of the Venezuelan consul in that colony. As, however, as your lordship is aware, the Venezuelan Government has repeatedly informed me that they would refuse to entertain any correspondence with this legation on any subject, save such as was connected with the *Ban Righ*, I conceived that it would be futile for me to make any official representation on this matter, nor, indeed, has Sir Alfred Moloney requested me to do so. I have, however, on several occasions called the attention of the Venezuelan Government verbally to the subject, and have thought it advisable at least to put officially on record the complaints which have been made against the consul in the note of which I have the honor to inclose a copy.

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 [Inclosure.]
*Mr. Haggard to General Ferrer.*

CARACAS, May 31, 1902.

M. LE MINISTRE: I regret that it should have been, on various occasions, my unpleasant duty to bring to your excellency's knowledge verbally, complaints

which I had received officially against the conduct of the Venezuelan consul at Port of Spain, one of which is that he is constantly guilty of irregularities in the consular fees which he charges.

Your excellency is aware that I have personal proof of this fact, as also that, in one case at least within my knowledge and that of your excellency, Señor Figueredo has disobeyed the direct orders of his Government in regard to the improper levying of a consular fee.

As far back as the 13th January the secretary of the Trinidad Chamber of Commerce addressed a letter to the colonial secretary on the matter of these irregularities, complaining, among other things, that the consul charged fees in excess of or not provided by the scale of fees detailed in Article LXVIII of the Venezuelan law of the 3d June, 1899.

On the 15th February the colonial secretary inquired from Señor Figueredo by what authority he had interfered with the trade of Mr. Lyon, a Trinidad merchant, by refusing to accept any dispatch of vessels from him or from any person acting as agent for him or for his house of business.

To this Señor Figueredo answered, on the 17th February, that he had done so by the order and with the authority of the Venezuelan Government, because Mr. Lyon was not a persona grata to that Government, but that if that gentleman wanted to dispatch a vessel under a non-Venezuelan flag he would not refuse to do so.

To this Sir Courtenay Knollys answered on the 19th of March that, while it was the governor's desire and intention to respect fully the position of a consul, it was at the same time as well that Señor Figueredo should thoroughly understand that his excellency was not prepared to recognize under any circumstances the right of any consul to discriminate in his official treatment of merchants, whatever their nationality, by imposing disabilities in any way or direction as regards facilities for obtaining consular signatures to documents or as against any vessels of whatever flag requiring, in their commercial intercourse, clearance from the ports of that colony.

Señor Figueredo was further asked, with reference to his statement that he had declined to accept dispatch of vessels from Mr. Lyon, to favor the Trinidad Government with a copy of the letter or order from the Government of Venezuela under which he acted in refusing dispatch to the ship to which Mr. Lyon was agent.

The further question was put to Señor Figueredo as to whether his statement that he did not propose to refuse to dispatch a vessel under a non-Venezuelan flag was also by order of his Government, as his excellency was unaware of and unprepared to recognize any consular right to refuse arbitrarily to a particular merchant clearance from the ports of Trinidad to vessels sailing under that consul's flag.

Señor Figueredo, in his reply of the 21st March, replied that he would apply to the Venezuelan Government for authority to give the copy of the official order requested, but there is nothing in the subsequent correspondence to show that this was ever produced.

Among other irregularities of Señor Figueredo in the conduct of his consulate which have been submitted to me is also the following:

On the 18th April Mr. E. R. Naysmith, attorney for the Compagnie Générale des Asphaltes de France (Limited), whose registered office is at 19 A, Coleman street, London, E. C., brought the following facts to the knowledge of the Government of Trinidad, and begged for their protection against similar circumstances.

On the 9th April he informed the Venezuelan consul in Trinidad that he was

desirous of dispatching the company's chartered British registered cutter or lighter *Euterpe* on the following Saturday, the 12th of that month, for Guanipa, the company's concession in the Orinoco delta. The consul at first declared his inability to dispatch the boat on account of the fact that the port of Pedernales, where the boat should call to pay the customs dues, was in the hands of the revolutionists. Mr. Naysmith assured him that this was not the case, they having set out for Maturin on the 4th April; the consul then promised to dispatch the boat whenever Mr. Naysmith was ready.

On the necessary papers being presented to the consul through Mr. Naysmith's agent he declined to grant the dispatch unless the sum of \$20, which he demanded for a passport on the occasion of a previous dispatch of the boat, was immediately paid, although he had previously assured Mr. Naysmith that this money should not be collected until the result of his inquiry in Caracas as to the legality of his claim was known. However, the latter consented to pay the \$20 under protest.

He then declined to grant the dispatch unless the full customs duties, which should be collected at a Venezuelan port, were paid to him there in Trinidad in advance. Mr. Naysmith objected to such an unprecedented demand, whereupon the consul not only declined to dispatch the boat, but also refused to give up the former's papers. This happened on Saturday, the 12th April. Mr. Naysmith's agent endeavored several times on Monday and Tuesday, the 14th and 15th of that month, to induce him to change his decision, but without result, although he offered to leave the money on deposit with the consul on the understanding that if the revolutionists collected anything down the main it was to be deducted from the amount on deposit.

On Tuesday, the 14th April, Mr. Naysmith, finding it impossible to get his boat away, and that the twenty-five or thirty British laborers he had working on the concession were running short of provisions, was compelled to pay to the consul, at his office in Trinidad, the sum of \$159.88, the amount of duty recoverable at a Venezuelan port, in addition to \$19 for the necessary dispatch papers.

By order of the consul Mr. Naysmith's papers were made out with the destination left blank, he himself filling in the name Guanipa, an uninhabited spot of the virgin forest, for which, it is stated by Venezuelan law, he renders himself liable to dismissal.

On granting the dispatch the consul told Mr. Naysmith's agent that, there being no collector of customs at Guanipa, on the return of the boat the papers were to be given up to him. In this way he would have become possessed of all the papers, which are always made out in triplicate, viz, one for the consul himself, one which he is supposed to send to the minister of finance in Caracas, and the one which the collector of customs keeps.

Under these circumstances, and the consequent difficulties thrown in the way of his business, Mr. Naysmith asked for the protection of the Government of Trinidad against the future high-handed proceedings of the Venezuelan consul.

On the 24th April a letter was addressed to Señor Figueredo by Sir Courtenay Knollys, the colonial secretary, in which he was requested to answer, for the information of his excellency the governor, the following questions:

Whether on Tuesday, the 14th April, he received from the agent clearing the vessel *Euterpe* a sum of \$159.88 for customs duties payable on the cargo of such vessel to the Government of Venezuela. His excellency was advised that, if so, he had gravely exceeded his powers and had assumed the right to commit an act of sovereignty on British territory, and would be glad to know by virtue of what authority the money was so received.

Whether it was true that he made out a clearance for the same vessel, *Euterpe*,

directed to the "Commandant of Guanipa;" whether Guanipa is a port of entry in Venezuela, and whether there is a commandant or any other officer of the Republic at that place, and, if there is no such person, for what purpose and by what authority he issued such clearance.

Whether it was true that he required the captain or other agent of the said *Euterpe* to return to him the triplicate copy of the clearance so granted; and if so, for what purpose and by what authority.

In asking these questions, and with reference to Señor Figueredo's remarks in his letter of the 5th April that the Venezuelan authorities are the proper persons to take cognizance of any irregularities committed by their officers, the colonial secretary was directed to inform him that his excellency the governor did not claim to exercise any direct control over his actions as consul for Venezuela, but that, on the other hand, it was his duty to satisfy himself that the affairs of the consulate within the colony were conducted according to international usage and due legality.

Señor Figueredo omitted to reply to most of these questions, but stated, on the 25th April, that it was a fact that on the 14th of that month he had dispatched for Guanipa the lighter *Euterpe*, collecting the fixed duties that its cargo of provisions was liable to on their entry into Venezuela.

Without, therefore, entering into the other irregularities, he, by his own confession, fully justifies Sir A. Moloney's remarks that he had gravely exceeded his powers, and assumed the right to commit an act of sovereignty on British territory. He goes on, however, to answer his excellency's inquiries as to what authority he was acting under in demanding this money, by stating that it is to the Venezuelan Government that complaints of his conduct should be addressed, apparently wishing to imply that he was committing these illegalities by the authority of his Government. This is manifestly absurd, nor is it to be supposed for a moment that his Government will indorse the misconduct of their official, but Señor Figueredo is right in supposing that, in the ultimate case, it is to the Venezuelan Government that complaints against it should be submitted, as they are now in this note.

I would here observe that the state of things, of which I have quoted two examples, has now been going on for many months, but I have refrained from making an official representation in the hopes that my verbal representations, together with the general condemnation of Señor Figueredo's conduct by Venezuelans of all parties—especially, to my knowledge, by active supporters of the Government—might bring about a change.

Your excellency is aware of the public animadversions which Señor Figueredo's conduct has evoked in Trinidad, and I would venture to submit that it points to a serious state of things when the agent of a government exposes himself to such public reprobation. I will say nothing of the practical injury to the trade of Venezuela thus caused, for that is the affair of the Venezuelan Government, but will confine myself to pointing out on this head the injury to the trade of a British possession caused by a Venezuelan official.

In submitting these circumstances to your excellency I feel sure that your exalted appreciation of what is due, both to the credit of your own country and to the interests of that which I have the honor of representing, will induce you to cause such steps to be taken as shall put an end immediately to a state of things as unusual as it is regrettable.

I avail, etc.,

W. H. D. HAGGARD.



[Extract.]

*Foreign office to colonial office.*

No. 91.]

FOREIGN OFFICE, *June 24, 1902.*

I am directed by the Marquis of Lansdowne to transmit to you, to be laid before the secretary of state, the accompanying copy of a telegram from Mr. Dickson,<sup>a</sup> who was at the date of its dispatch in temporary charge of His Majesty's legation at Bogota, conveying the reply of the Columbian Government to the inquiry which was addressed to them with regard to the *Libertador* and *Bolivar*.

I am now to state that, in his lordship's opinion, the assurances given may be accepted as satisfactory, and that the vessel may be allowed to refit in Port of Spain, and proceed thence to Colombian waters.

I am to suggest that the governor of Trinidad should be instructed in this sense.

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*Colonial office to foreign office—(Received June 26).*

No. 92.]

DOWNING STREET, *June 25, 1902.*

SIR: I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquis of Lansdowne, with reference to the colonial office letter of the 29th ultimo, the accompanying copy of a dispatch, with inclosures, from the governor of Trinidad, relating to the conduct of Señor Figueredo, Venezuelan consul at Port of Spain.

2. Mr. Chamberlain would be glad to learn whether Lord Lansdowne saw fit to take any action in consequence of the colonial office letter above mentioned.

I am, etc.,

C. P. LUCAS.

[Inclosure 1.]

*Governor Sir A. Moloney to Mr. Chamberlain.*

GOVERNMENT HOUSE,

*Trinidad, May 28, 1902.*

SIR: In continuation of my dispatch of the 2d instant, I have the honor to transmit herewith a copy of the further correspondence on the subject of the conduct of M. C. B. Figueredo, consul for Venezuela.

I have, etc.,

ALFRED MALONEY.

[Inclosure 2.]

*Orinoco Asphalt Company to Governor Sir A. Moloney.*PORT OF SPAIN, *May 23, 1902.*

SIR: We take the liberty of submitting to your excellency the following facts, viz:

The Venezuelan consul here, M. Carlos B. Figueredo, wrote us on the 24th

April last that he was unable to certify any dispatch for our vessels to Pedernales as long as this place was in the hands of the revolutionary party. Afterwards, we were informed that the said consul had received special instructions from the Venezuelan Government at Caracas to dispatch vessels of all companies established here possessing mines in Venezuela, if such vessels had to carry provisions for their employees and laborers. Not having received from the Venezuelan consulate any communication about this matter, we directed a letter to M. Figueredo the 20th of this month asking him for the dispatch of our steam launch *Explorador* and our lighter *Ibis* with cargo for Pedernales. This letter was answered the same day.

Your excellency would be kind enough to remark from this reply that the consul declares himself disposed to give us, in accordance with special instructions received from Caracas, the desired dispatch, but only for our lighter *Ibis*, and under the most strict condition that the same duties which we under general circumstances should have to pay to the collector of customs in Guiria were to be paid to him here at delivery of the certified dispatch papers of our lighter.

Now, taking in consideration (1) that the Venezuelan consulates have no legal right at all to collect amounts which belong to "El Fisco Nacional de Venezuela;" (2) that the consul is not disposed either to accept any deposit of the corresponding duties—as our proposal was—or to assume the responsibility of a guarantee that we should not have to pay the same duties at the arrival of the vessel at Pedernales; (3) that a protest by us through the German consul here, and consequently a claim against the Government of Venezuela, would be in vain in view of the decrees which have lately been given by the actual President of Venezuela; and, lastly (4), that we have the urgent necessity of providing our mine with these provisions just arrived from New York in transit for Pedernales and with transshipment here.

We beg your excellency to be kind enough to communicate to us if you should be able to cause the disappearance of the above-mentioned inconveniences, as we can not expect that the British Government should tolerate that M. Carlos B. Figueredo, at the same time executing his consular functions, should also be allowed to assume the duties of a collector of customs of Venezuela.

As our lighter *Ibis* has to leave this port as soon as possible, an early reply will greatly oblige.

Your obedient servants,

(Orinoco Asphalt Company, G. M. B. H., Trinidad Agency, by special power of attorney),

W. FECHTENBURG.

[Inclosure 3.]

*Señor Figueredo to Orinoco Asphalt Company.*

MAY 20, 1902.

SIR: I beg to acknowledge receipt of your favor of this date, and in answer I beg to let you know that, in fact, I have received instructions from my Government to dispatch the vessel which your company should destine to carry provisions for the laborers of your mines and for no other.

Consequently this consulate will dispatch the lighter *Ibis*, but only under the written conditions sent to me by the Government, among which is the following: That your company has to satisfy this consulate the same duties which you would have to pay to the collector of customs at Guiria at the delivery of the dispatch papers.

I think it is time that I should let you know that this temporary and humani-

tary concession does not divert in any way the protest which the Government has presented through the department of foreign affairs with regard to the dispatches which have been effected by the German consul.

I am, etc.,

CARLOS B. FIGUEROA,  
Consul for Venezuela.

[Inclosure 4.]

*Mr. Naysmith to the Colonial Secretary, Trinidad.*

PORT OF SPAIN, May 24, 1902.

SIR: In an interview you granted me two days ago re dispatch of British cutter *Euterpe*, you advised me to apply for a dispatch from the Venezuela consul on condition that he accepted the duty under protest. I applied for the dispatch, but he refused to grant it to me on those terms, as he refused to recognize British authority. I therefore notified you in my letter of the 23d instant that he refused to dispatch my boat unless I paid all duties, etc., unconditionally. Later in the day you advised me to pay the duty unconditionally, which I have done, as I could not in any other way get down to my men, who are nearly or quite out of provisions.

This morning the consul notified me that when I met the Venezuelan gunboat *General Crespo* I was not to try and get away from it, as they were notified that I should leave to-night, and were instructed to look over my papers, cargo, etc., and deal with me as they were instructed.

I was stopped by the same gunboat *General Crespo* on my last return from Venezuela, and informed that if I came back to Venezuelan waters flying the British flag I should be seized or sunk.

I have some 25 to 30 British subjects awaiting food supplies in Venezuela, and having no protection, had to leave with supplies to-night at the risk of our lives.

I was requested by his excellency's private secretary this afternoon to put this explanation in writing.

I have, etc.,

E. R. NAYSMITH.

[Inclosure 5.]

*Colonial Secretary, Trinidad, to Señor Figueredo.*

PORT OF SPAIN, May 26, 1902.

SIR: Referring to my letter of the 24th [? 23d] ultimo and to your reply of the 25th, I am directed by the governor to draw your attention to the fact that a further complaint has been made to his excellency by the Orinoco Asphalt Company that before granting a clearance, which was formerly applied for on the 20th instant, to their steam launch and lighter to proceed to Guiria for the purpose of conveying food to the employees—many of whom are British subjects—of the company at Pedernales, you compelled the latter to pay the duties which would have been leviable on such goods when landed in Venezuela.

2. I have further to inform you that a complaint has also been made to his excellency by Mr. Naysmith, attorney for the Compagnie Générale des Asphaltes de France, that on his applying to you, on the 6th instant, for a clearance of the company's lighter *Euterpe* for the purpose of conveying food to the company's laborers employed on the Orinoco delta, that you refused to grant such clearance, and that you further threatened Mr. Naysmith that should the *Euterpe* be

dispatched through the British Government or any other authority, she would be seized as soon as she proceeded outside the limits of British waters.

3. His excellency will be glad to know whether these statements are correct, and, if so, on what authority rest your attitude and action.

I have, etc.,

C. C. KNOLLYS.

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[Inclosure 6.]

*Señor Figueredo to Colonial Secretary, Trinidad.*

MAY 27, 1902.

HONORABLE SIR: I have the honor to inform you that I am in receipt of letter, dated yesterday, which you have forwarded to me by order of his excellency the governor, with reference to the Orinoco Asphalt Company and Mr. Naysmith, agent for the Compagnie Générale des Asphaltes de France.

As the undersigned acts as a dependent employee of the Venezuelan Government, and governs his actions in accordance with the laws of the Republic and superior orders which he receives, without transgressing either those of the colony or those of Great Britain, it is very strange that the representatives of the said companies in Trinidad should occupy your excellency's attention with complaints foreign to the jurisdiction of your excellency, seeing that there exists a legal way of presenting such complaints to the Government of Venezuela, before whom such accusations ought to be taken, and who will try the acts of the undersigned as consul of the Republic.

Yours, etc.,

C. B. FIGUEREDO,  
Consul for Venezuela.

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*Mr. Dickson to the Marquess of Lansdowne—(Received June 30).*

No. 93.]

BOGOTA, May 14, 1902.

MY LORD: With reference to your lordship's telegram of the 2d ultimo, I have the honor to inclose a note which at my request the Colombian minister for foreign affairs has been good enough to address to me on the subject of the status of the *Libertador*.

I have, etc.,

SPENCER S. DICKSON.

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[Inclosure—Translation.]

*Señor Paul to Mr. Dickson.*

MINISTRY FOR FOREIGN AFFAIRS,  
Bogotá, Colombia, May 7, 1902.

SIR: I have the honor to acknowledge the receipt of your note of the 2d instant, in which you request, for the information of your Government, a reply to the following questions put by you:

1. Is the vessel known as the *Libertador* the property of the Government of Colombia and recognized by the said Government as such?

2. Will the Government of Colombia undertake to prevent the said vessel from committing, in the future, acts of hostility against Venezuela so long as no state of war exists between Colombia and Venezuela?

With regard to the first point, I confirm what I stated to you verbally in a previous interview, viz, that the Government of Colombia regards the *Libertador* as its property by reason of having granted facilities to certain of its agents in Europe to purchase various ships of war, and that the above mentioned is one of the vessels which figure as having been bought for the use of the Republic.

With regard to the second point, I must point out to you that the Government will not authorize the said vessel to be used for the purpose of committing hostile acts against Venezuela so long as no state of war exists between the two Republics.

Orders have, moreover, been given that the *Libertador*, formerly the *Ban Righ*, shall proceed to Colombian waters for the purpose of stationing herself there. I therefore request that you will be so good as to inform His Majesty's Government that the Colombian Government would be obliged if permission could be granted for the said vessel to refit in Port of Spain and proceed from that harbor as soon after as the agents of the Republic may decide.

I avail, etc.,

FELIPE F. PAUL

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*Foreign Office to Colonial Office.*

No. 94.]

FOREIGN OFFICE, *July 1, 1902.*

SIR: I am directed by the Marquis of Lansdowne to acknowledge the receipt of your letter of the 11th ultimo, forwarding a dispatch, with inclosures, from the governor of Trinidad, in which he calls attention to the destruction at Pedernales of the British vessel *In Time* by the Venezuelan gunboat *General Crespo*. Sir A. Moloney suggests that, on the return of His Majesty's ship *Indefatigable*, the *General Crespo* should be seized and held until compensation shall have been made for the destruction of the *In Time* and other British vessels. He is also of opinion that the harbor of Port of Spain should be closed until further notice to the Venezuelan navy.

Lord Lansdowne considers that stronger evidence would be necessary in order to justify so drastic a measure as the seizure of the Venezuelan gunboat. His lordship thinks, however, that in view of the circumstances described in Sir A. Moloney's dispatch, Mr. Haggard might be instructed to inform the Venezuelan Government that, unless they are able to disprove the reports which have been received relative to the destruction of the *In Time*, His Majesty's Government may be obliged to cease extending the hospitality of British ports to Venezuelan cruisers.

I am to inquire whether Mr. Chamberlain concurs in the issue of instructions in this sense.

I am, etc.,

F. H. VILLIERS.

[Extract.]

*Mr. Haggard to the Marquess of Lansdowne—(Received July 3).*

No. 95.]

CARACAS, June 14, 1902.

In my dispatch of the 31st May, I had the honor to inclose a copy of a note to the Venezuelan Government, putting before them various complaints against the conduct of the Venezuelan consul in Port of Spain, forwarded by the governor of Trinidad.

The Venezuelan Government have made no reply to this note, and I have now the honor to inclose a further communication which I have addressed to them, putting before them two more statements as to the conduct of this official, and requesting to be favored with the grounds on which he acted in the manner described.

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[Inclosure.]*Mr. Haggard to General Ferrer.*

M. LE MINISTRE: With reference to my note of the 31st ultimo on the subject of the conduct of the Venezuelan consul at Port of Spain, I have the honor to inform your excellency that I am now informed by the governor of Trinidad that that officer's attention had been drawn to the fact that a further complaint has been made to his excellency by the Orinoco Asphalt Company, that before giving a clearance which was applied for on the 20th instant for their steam launch and lighter to proceed to Guiria for the purpose of conveying food to the employees (many of whom are British subjects) of the company at Pedernales, the Venezuelan consul compelled the latter to pay the duties which would have been leviable on such goods when landed in Venezuela.

Señor Figueredo was further informed by the colonial secretary that a complaint had also been made to his excellency by Mr. Naysmith attorney for the "Compagnie Générale des Asphaltes de France;" that on his applying to him on the 6th instant for a clearance of the company's lighter *Euterpe*, for the purpose of conveying food to the company's laborers employed on the Orinoco delta, he had refused to grant such clearance, and that he further threatened Mr. Naysmith that should the *Euterpe* be dispatched through the British Government or any other authority she would be seized as soon as she proceeded outside the limits of British waters.

His excellency requested to be informed if these statements were correct, and if so on what authority the attitude and action taken by Señor Figueredo rested.

I should be much obliged if your excellency would be kind enough to favor me with the grounds on which Señor Figueredo acted in the manner described.

I avail, etc.,

W. H. D. HAGGARD.



*Mr. Haggard to the Marquess of Lansdowne—(Received July 3).*

No. 96.]

CARACAS, June 14, 1902.

MY LORD: With reference to my dispatch of the 7th March I have the honor to inclose further correspondence with reference to the seizure of the British ship *Indiana* on the Barima River. I have received no reply to my note of the 14th May, and in view of the determination of the Venezuelan Government to refuse to entertain any question with His Majesty's legation, save one, in which they conceive their own interests to be concerned, I do not expect to do so until the present situation changes.

In the meanwhile the Venezuelan Government are indorsing what would seem to be a gross outrage which has entailed the destruction of a British vessel.

I have, etc..

W. H. D. HAGGARD.

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[Inclosure 1.]

*Mr. Haggard to Governor Sir J. Swettenham.*

CARACAS, April 25, 1902.

SIR: In my dispatch of the 9th February I had the honor of informing your excellency that I would forward you the result of the inquiry promised by the Venezuelan Government into the matter of the seizure of the British sloop *Indiana* by Venezuelans in the waters of the Barima.

I have had a good deal of correspondence on this subject with the Venezuelan Government, but they have not as yet forwarded me the promised report, and I have been waiting to reply to your excellency's communications on this matter in the hopes of having something to report. I have now received your further dispatch of the 21st March, inclosing the claim of the owner of the *Indiana* for compensation. This I will present to the Venezuelan Government on the first favorable opportunity.

In the present completely disorganized condition of the country I fear that it would be useless to do so at this moment.

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure 2.]

*Mr. Haggard to General Ferrer.*

CARACAS, May 14, 1902.

M. LE MINISTRE: In the note from your excellency's predecessor of the 4th February he was good enough to inform me that mine of the 16th and 29th January, on the subject of the seizure in the waters of the Barima River, within Venezuelan territory, of a British sloop named the *Indiana*, would be referred to the department of the interior in order that inquiries should be made into the case and the result obtained as quickly as possible.

In the former of my two notes I had informed his excellency that the governor of British Guiana had requested me to ascertain from the Venezuelan Government the grounds on which the *Indiana* had been seized and detained.

Further correspondence has passed between the Venezuelan Government and

this legation on this subject, but I regret to say that the result of the promised inquiry has not yet reached me. I have, however, been furnished by the governor of British Guiana with much more sworn evidence proving, as would seem, the illegality of the seizure of the boat which was afterwards lost owing to that action. All this evidence is at your excellency's disposal.

The governor of British Guiana has now forwarded to me a claim against the Venezuelan Government, made by Antonio Gonsalves Jardim, for \$2,000 compensation for the loss of his ship.

I have the honor to inclose a copy of this document in support of this claim, and to express the hope that the Venezuelan Government will lose no time in taking the necessary steps to compensate the owner of the *Indiana* to that amount for the loss of his ship through the action of their officers in the Barima River.

I avail, etc.,

W. H. D. HAGGARD.

P. S.—I also have the honor to inclose Jardim's solemn declaration of the facts on which he founds his claim for compensation, as well as that of Nathaniel Roberts, the captain of the *Indiana*, giving an account of the facts.\*

W. H. D. H.

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[Telegram.]

*The Marquess of Lansdowne to Mr. Haggard.*

No. 97.]

FOREIGN OFFICE, *July 3, 1902.*

Satisfactory assurances have been received from the Colombian Government.

1. That they regard the *Libertador*—formerly *Ban Righ*—as their property; and,

2. That so long as no state of war exists between Colombia and Venezuela the use of the vessel for the purpose of committing acts of hostility against Venezuela will not be authorized by them. They have further issued orders that the *Ban Righ* shall proceed to Colombian waters and be stationed in those waters.

In view of these assurances, the governor of Trinidad has been informed that the refitting of the vessel in Port of Spain Harbor and her departure to Colombian waters may be permitted.

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*Foreign office to colonial office.*

No. 98.]

FOREIGN OFFICE, *July 4, 1902.*

SIR: I am directed by the Marquis of Lansdowne to acknowledge the receipt of your letters of the 13th and 29th May and the 25th ultimo, respectively, forwarding dispatches from the governor of Trinidad relative to the conduct of Señor Figueredo, Venezuelan consul at Port of Spain; and I am to transmit to you, for the information

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\* See Inclosures 3 and 6 in No. 99.

of Mr. Secretary Chamberlain, the accompanying copy of a dispatch which has been received from Mr. Haggard, His Majesty's minister at Caracas, on the same subject.

The matter has now been carefully considered by Lord Lansdowne, and I am to transmit to you the draft of a telegraphic instruction which, if Mr. Chamberlain concurs in that course, his lordship proposes to address to Mr. Haggard.

I am, etc.,

F. H. VILLIERS.

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*Colonial Office to Foreign Office—(Received July 5).*

No. 99.]

DOWNING STREET, *July 4, 1902.*

SIR: I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquis of Lansdowne for such action as his lordship may see fit to take, the accompanying copies of dispatches from the governor of British Guiana, with inclosures, on the subject of the seizure by the Venezuelan authorities of the British sloop *Indiana*.

I am, etc.,

C. P. LUCAS.

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[Inclosure 1.]

*Governor Sir J. Swettenham to Mr. Chamberlain.*

GOVERNMENT HOUSE,

*Georgetown, Demerara, March 22, 1902.*

SIR: I have the honor to transmit herewith, for your information, a copy of a claim for compensation, supported by statutory declarations, which has been addressed to me by the owner of the sloop *Indiana*.

I have forwarded this claim to the British minister at Caracas.

I have, etc.,

J. A. SWETTENHAM.

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[Inclosure 2.]

*Petition.*

His Excellency Sir JAMES ALEXANDER SWETTENHAM,

*Knight Commander of the Most Distinguished Order of St. Michael and St. George, Governor and Commander in Chief in and over the Colony of British Guiana, Vice-Admiral, etc.:*

The humble petition of Antonio Gonsalves Jardim, an inhabitant of the city of Georgetown, in the county of Demerara, and colony of British Guiana, respectfully sheweth:

1. Your petitioner is an inhabitant of the city of Georgetown and carries on business in the Stabroek market, in the said city, as a shopkeeper.

2. Your petitioner was the owner of the British sloop *Indiana*, of 17 tons, which was duly registered.

3. The said sloop left the port of Georgetown on the 13th December, 1901, for

the port of Morawhanna, with goods for that port, and with empty barrels only for grants on Venezuelan territory in the Barima River, in which barrels goods were to be shipped from the said grants to Georgetown.

4. Your petitioner has frequently delivered empty barrels to the said grants for the purpose aforesaid.

5. The practice of delivering such empty barrels was well known to and approved by the Venezuelan authorities in the Barima.

6. No goods of any description other than the said empty barrels were on board the said sloop for delivery in Venezuelan territory.

7. Your petitioner was informed by the captain of the said sloop that she was seized in midstream in the Barima River, on the 16th December, 1901, by the Venezuelan authorities, it being stated by them that she had contraband goods on board.

8. On the 19th December, 1901, owing to the report of the seizure of the said sloop, your petitioner visited the governor or presiding officer at his place of business at Amacuru, and saw the said sloop in his custody.

9. The said governor or presiding officer stated that he was willing to deliver the said sloop to your petitioner, but on the representations of his secretary or attendant, who asserted that he saw contraband goods delivered from the sloop on Venezuelan territory, and who undertook the responsibility of detaining her, the said governor or presiding officer withheld the said sloop from your petitioner.

10. Your petitioner was informed, and verily believes, that the said sloop has since been wrecked through the action of the Venezuelan authorities and their subordinates at Amacuru.

11. Your petitioner paid \$550 for the said sloop about three years ago, and expended about \$300 in repairs last year. She was in good order when she was seized.

12. The said sloop brought your petitioner, in her trading between the ports of Georgetown and Morawhanna, a net profit of \$40 per month.

13. It will be very difficult to acquire a similar sloop by purchase.

14. Your petitioner is informed, and verily believes, that it will cost him \$3,500 to build a new sloop of the same size and quality.

15. Your petitioner is informed, and verily believes, that the seizing of the said sloop in midstream is against the award of the 3d October, 1899, in connection with the settlement of the boundary between Venezuela and British Guiana, by which ships of all nations were to enjoy the privilege of free navigation in the Barima River in time of peace.

16. Your petitioner has suffered, and continues to suffer, loss in consequence of the wrongful action of the Venezuelan authorities in the Barima River, which loss he estimates at \$2,000, and prays that your excellency will be graciously pleased to take such steps and to make such claim as may be necessary to recover the sum of \$2,000 from the Venezuelan Government, as indemnity and compensation to your petitioner in consequence of the circumstances narrated herein.

And your petitioner, as in duty bound, will ever pray.

ANTONIO GONSALVES (his x mark) JARDIM.

Witness to mark:

C. SKERRETT.

DEMERARA, the 15th day of March, 1902.

The petitioner relies on his declaration, and that of Hannibal Johnson, forwarded herewith, and on the sworn statements taken by the stipendiary magistrate of the northwest district.

[Inclosure 3.]

*Declaration by Antonio Gonsalves Jardim.*

BRITISH GUIANA,

*County of Demerara.*

I, Antonio Gonsalves Jardim, shopkeeper, of lot 71, Murray street, in the city of Georgetown, in the county of Demerary and colony of British Guiana, do solemnly and sincerely declare as follows:

1. I was the owner of the British sloop *Indiana*, of Georgetown.
2. The said sloop was duly registered.
3. The said sloop left the port of Georgetown for the port of Morawhanna on the 13th December, 1901, with goods for that port and with empty barrels only for grants on Venezuelan territory in the Barima River, in which barrels goods were to be shipped from the said grants to Georgetown.
4. I have frequently delivered empty barrels to the said grants for the purpose aforesaid.
5. The practice of delivering such empty barrels was well known to, and approved by, the Venezuelan authorities in the Barima.
6. No goods of any description other than the said empty barrels were on board the said sloop for delivery in Venezuelan territory.
7. I am informed by the captain of the said sloop that she was seized in mid-stream in the Barima River on the 16th December, 1901, by the Venezuelan authorities, it being stated by them that she had contraband goods on board.
8. On the 19th of December, 1901, owing to the report of the seizure of the said sloop, I visited the governor or presiding officer at his place of business at Amacura, and saw the said sloop in his custody.
9. The said governor or presiding officer stated that he was willing to deliver the said sloop to me, but on the representations of his secretary or attendant, who asserted that he saw contraband goods delivered from the sloop on Venezuelan territory, and who undertook the responsibility of detaining her, the said governor or presiding officer withheld the said sloop from me.
10. I am informed, and verily believe, that the said sloop has since been wrecked through the action of the Venezuelan authorities and their subordinates at Amacura.
11. I paid \$550 for the said sloop about three years ago, and expended about \$300 in repairs last year. She was in good order when she was seized.
12. The said sloop brought me, in her trading between the ports of Georgetown and Morawhanna, a net profit of \$40 per month.
13. It will be very difficult to acquire a similar sloop by purchase.
14. I am informed, and verily believe, that it will cost me \$3,500 to build a new sloop of the same size and quality.

I make this declaration, conscientiously believing the same to be true, and according to the statutory declarations ordinance of 1893.

ANTONIO GONSALVES (his x mark) JARDIM.

Declared to at the city of Georgetown this 15th day of March, 1902.

Before me,

JAMES A. RICHARDSON,  
*Commissioner of Affidavits.*

[Inclosure 4.]

*Declaration by Hannibal Johnson.*

BRITISH GUIANA,

*County of Demerara.*

I, Hannibal Johnson, of lot 168, Upper Charlotte street, in the city of Georgetown, in the county of Demerara and colony of British Guiana, shipwright, do solemnly and sincerely declare as follows:

1. I have been a shipwright for the last forty-two years.
2. I have carried on my own business as a shipwright for the last twenty-five years.
3. During the said period of twenty-five years I have built, rebuilt, and repaired numerous crafts of all sizes, from 100 tons downward.
4. I knew the sloop *Indiana*, 17 tons, of Georgetown, the property of Antonio Gonsalves Jardim.
5. About five years ago I surveyed the said sloop *Indiana* for the purpose of fixing her value for an intending purchaser.
6. I then valued the said sloop at \$700, which sum was then her fair value.
7. The said sloop was then in fair condition.
8. After I valued the said sloop she was thoroughly repaired. I saw the repairs effected.
9. In thorough order the said sloop would be worth \$1,200.
10. It would cost \$3,500 to build a sloop similar in size and quality to the said sloop *Indiana*.

I make this declaration, conscientiously believing the same to be true, and according to the statutory declarations ordinance of 1893.

HANNIBAL JOHNSON.

Declared to at the city of Georgetown this 15th day of March, 1902.

Before me,

JAMES A. RICHARDSON,  
*Commissioner of Affidavits.*

[Inclosure 5.]

*Governor Sir J. Swettenham to Mr. Chamberlain.*

GOVERNMENT HOUSE,

*Georgetown, Demerara, May 5, 1902.*

SIR: I have the honor to transmit herewith, for your information, in continuation of my dispatch No. 99 of the 22d March, copies of two further statutory declarations which have been submitted by the owner of the sloop *Indiana* in support of the claim for compensation, copy of which was inclosed in that dispatch.

2. The declarations have been forwarded to the British minister at Caracas. I have, etc.,

J. A. SWETTENHAM.

[Inclosure 6.]

*Declaration by Nathaniel Roberts.*

BRITISH GUIANA,

*County of Demerara.*

I, Nathaniel Roberts, of Pomeroon, in the county of Essequibo, do solemnly and sincerely declare as follows:

1. I am a sailor, and was captain of the British sloop *Indiana*, the property of Antonio Gonsalves Jardim, of this colony.



2. On the 13th day of December, 1901, I left Georgetown with the sloop *Indiana* bound on a voyage to Morawhanna, in the county of Essequibo, with a cargo of flour, rice, sugar, beer, and other merchandise, consigned to shopkeepers at Morawhanna.

3. I had on board empty barrels to be delivered to grantholders on the Venezuelan side of the boundary, in which they were to ship goods to Georgetown.

4. I have frequently carried empty barrels to the grantholders on the Venezuelan side of the boundary with the full knowledge and consent of the authorities at Amacuro.

5. All the goods and merchandise on board were entered in the cargo book with the names of the persons to whom they were shipped.

6. All the goods and merchandise on board were delivered to the persons to whom they were shipped, all of whom were shopkeepers at Morawhanna.

7. It is not true that the cargo or any part of it was transshipped on the boundary into small boats to be introduced into Amacuro territory.

8. Only the empty barrels were landed on the Venezuelan side of the boundary.

9. It is not true that I informed the Government secretary of the Amacuro territory that I had landed merchandise on the Venezuelan side of the boundary.

10. On the 16th December, 1901, when the said Government secretary went on board the sloop *Indiana*, I was on shore, and went off on receiving a message sent by the said Government secretary, through Charles Grant, a sailor in the said sloop.

11. When I got on board the sloop, the said Government secretary asked me if I had any papers. I said "No." I showed him the cargo book, which was read to him by one of his men who acted as interpreter. He asked where I had landed the goods, and I told him at Morawhanna. I denied that I had landed goods on the Venezuelan side of the boundary; I told him I only brought empty barrels for grantholders on his territory, in which they were to ship goods to Georgetown, and that I had made three previous voyages with empty barrels for this purpose with the consent and knowledge of the authorities at Amacuro.

12. The said Government secretary then seized the vessel, and I was compelled to work the sloop under the direction of his men, who threatened to shoot me if I refused to do so. The men were armed with guns and swords.

13. The sloop was being taken to Amacuro, and during the night I escaped in a small boat and made my way to Morawhanna.

14. The sloop was in good order and had good anchor and anchor chains.

I make this declaration conscientiously, believing the same to be true, and according to the statutory declarations ordinance of 1893.

NATHANIEL (his x mark) ROBERTS.

Declared to at the city of Georgetown, this 16th day of April, 1902.

Before me,

A. E. MANNING,  
*Commissioner of Affidavits.*

[Inclosure 7.]

*Declaration by Charles Grant.*

BRITISH GUIANA,

*County of Demerara:*

I, Charles Grant, of Pomeroon, in the county of Essequibo, do solemnly and sincerely declare as follows:

1. I am a boat hand, and was engaged by Antonio Gonsalves Jardim to work as a sailor in the sloop *Indiana*.

2. On the 13th December, 1901, I left Georgetown in the said sloop bound on a voyage to Morawhanna, in the said county of Essequibo.

3. On arriving at Morawhanna all the merchandise on board was delivered to shopkeepers there.

4. We then proceeded to drop down the Barima River for the purpose of delivering empty barrels to certain grants on the Venezuelan side of the boundary.

5. It is not true that merchandise was transshipped into small boats to be introduced into the Amacuro territory.

6. On the 16th December, 1901, the Government secretary of the Amacuro territory came on board the said sloop with several men who were armed. The captain of the sloop was on shore.

7. The said Government secretary sent me for the captain. I went for him.

8. When the captain went on board the said Government secretary asked him if he had papers allowing him to trade with Venezuela.

9. The captain said he had brought empty barrels for the grantholders. He was charged by the said Government secretary with landing contraband goods on Venezuelan territory, and denied it.

10. The said Government secretary then seized the said sloop and forced her crew to work under the directions of his men, who threatened to shoot us if we refused.

11. While the sloop was on her way to Amacuro the captain escaped in a small boat at night.

12. The sloop was taken to Amacuro and anchored there. While she lay there I saw the owner, Mr. Jardim, come to Amacuro.

13. After this, a black man—one of the men who had come on board the sloop with the said Government secretary when she was seized, and who was armed with sword gun—came on board one night at 12 o'clock and told me and the other sailor belonging to the sloop—one Joseph Nickson—that he had orders to take the sloop to Bolivar, and that we were to work her. We refused, and said we wanted to return to Morawhanna. The black man threatened to shoot us if we did not obey him.

14. We lifted the anchor under the directions of this black man, who, while we were doing so, made a great noise with his cutlass, under the pretense of cutting the grass that surrounded the sloop.

15. No one took any notice of our moving, although it was a bright moonlight night, for the reason that the grass that surrounded the sloop always caused her to drag her anchor during the falling tide.

16. When we were under way, the black man who had taken command of the sloop told us he was going to Trinidad. We again declined to go there, and he again threatened to shoot us if we refused.

17. This black man did not know the coast, and was not capable of navigating the sloop, which, soon after we got out of the river, grounded on a beach.

18. All attempts to get her off were unavailing, and we took to the boats after spending four days on the beach, during which time we finished all the provisions we had.

19. The black man said we were to take him to Trinidad in the boats, and threatened to shoot us if we refused.

20. We stopped at an island, where the black man got information as to the course he should take to reach Trinidad. Only Indians lived on the island; they gave us some cassava.

21. The black man then compelled us to return to the sloop, from which he

took the sails, ropes, blocks, and compass, and put them in the small boat. We then started for Trinidad without provisions of any sort.

22. The boat was under sail, the black man having put a small sail on board before we left Amacuro.

23. This black man is the same man who was charged with assaulting an Indian girl.

24. We were a day and a night before we reached Trinidad.

25. We landed at a small place in Trinidad, about four hours' walk from Cedros, where the black man pawned the compass to a shopkeeper for bread and cheese, which he divided between us.

26. The warden of this place kept the boat we used in his boathouse, and took the gun which the man had into his house, after which he took us by road to Cedros and handed us over to the sergeant in charge of the police station there.

27. The sergeant took us to the magistrate of Cedros, who took a statement in writing from the black man.

28. The black man told the magistrate that he had bought the sloop from a Spaniard at Amacuro; that a storm had caused her to drag her anchor, and that she had been wrecked on a beach in consequence, causing him a loss of his canister, clothing, and money.

29. It is not true that we encountered a storm. The vessel was run aground through the ignorance of the black man, who had taken command and who was steering. He kept too near the shore.

30. The magistrate of Cedros sent us on to Port of Spain.

31. From Port of Spain the black man was sent back to Cedros for the boat and we were sent to Georgetown by the Government in a steamer.

32. I have not seen the black man since he was sent back to Cedros.

33. I and the other sailor who was with me did not tell the warden and the magistrate the truth, because the black man told us not to speak, and we were afraid of him.

I make this declaration conscientiously, believing the same to be true and according to the statutory declarations ordinance of 1883.

CHARLES (his x mark) GRANT.

Declared to at the city of Georgetown this 16th day of April, 1902.

Before me.

A. E. MANNING,  
*Commissioner of Affidavits.*

[Inclosure 8.]

*Governor Sir J. Swettenham to Mr. Chamberlain.*

GOVERNMENT HOUSE,  
*Georgetown, Demerara, May 31, 1902.*

SIR: With reference to previous correspondence, I have the honor to transmit herewith copies of two letters which I have received from the British minister at Caracas with regard to the seizure by the Venezuelan authorities of the sloop *Indiana*, referred to therein.

2. I would ask that you will, if you think proper, support by a representation to the foreign office the claim for damage preferred by the owner of the *Indiana*, a copy of which was transmitted in my dispatch No. 99, of the 22d March.

I have, etc.,

J. A. SWETTENHAM.

[Inclosure 9.]

*Mr. Haggard to Governor Sir J. Swettenham.**Caracas, May 16, 1902.*

SIR: I have been desirous of presenting to the Venezuelan Government on the first favorable opportunity the claim of the owner of the *Indiana* for compensation for the loss of his vessel owing to the action of their officials.

There has lately been a change of cabinet here, and, although I am not sure that this can be looked upon exactly as a favorable opportunity for which I wished, as it may be advisable that the claim should at least be recorded, I have forwarded it to the Venezuelan Government in a note, of which I have the honor to inclose a copy.

The documents, copies of which I have thought for the moment sufficient to refer to the Government, were:

1. The petition of Antonio Gonsalves Jardim; and
2. The declaration of Antonio Gonsalves Jardim, dated the 15th March, 1902, inclosed in your excellency's dispatch of the 21st March, 1902.
3. The declaration of Nathaniel Roberts, dated the 16th April, 1902, and inclosed in your excellency's dispatch of the 23d ultimo.

I have, etc.,

W. H. D. HAGGARD.

*Colonial office to foreign office—(Received July 9).*

No. 100.]

DOWNING STREET, July 8, 1902.

SIR: I am directed by Mr. Secretary Chamberlain to acknowledge the receipt of the foreign office letter of the 1st instant, relating to the alleged destruction at Pedernales of the British vessel *In Time* by the Venezuelan gunboat *Crespo*.

Mr. Chamberlain concurs in the instructions which Lord Lansdowne proposes to send to Mr. Haggard, and on hearing that they have been sent he will cause a similar telegram to be sent to the governor of Trinidad.

I am, etc.,

C. P. LUCAS.

*Colonial office to foreign office—(Received July 10).*

No. 101.]

DOWNING STREET, July 9, 1902.

SIR: I am directed by Mr. Secretary Chamberlain to acknowledge the receipt of the foreign office letter of the 4th instant, on the subject of the conduct of the Venezuelan consul at Port of Spain, and to state that Mr. Chamberlain concurs in the instructions which the Marquis of Lansdowne proposes to give to His Majesty's minister at Caracas with reference to the matter.

I am, etc.,

C. P. LUCAS.

*The Marquess of Lansdowne to Mr. Haggard.*

[Telegram.]

No. 102.]

FOREIGN OFFICE, *July 10, 1902.*

I have received your dispatch of the 31st May and 14th June, and should wish you to present to the Venezuelan Government a protest against the action of M. Figueredo, their consul at Port of Spain. You should at the same time state that no exequatur will be issued to him unless satisfactory assurances as to his future conduct are forthcoming.

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*The Marquess of Lansdowne to Mr. Haggard.*

[Telegram.]

No. 103.]

FOREIGN OFFICE, *July 11, 1902.*

I request you to warn the Venezuelan Government that His Majesty's Government may be forced to cease extending to Venezuelan cruisers the hospitality of British ports, unless the Government are in a position to disprove the reports relative to the destruction of the vessel *In Time*.

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*Foreign Office to Colonial Office.*

No. 104.]

FOREIGN OFFICE, *July 14, 1902.*

SIR: I am directed by the Marquis of Lansdowne to acknowledge the receipt of your letter of the 4th instant, inclosing copies of dispatches from the governor of British Guiana with regard to the seizure by the Venezuelan authorities of the British sloop *Indiana* in the River Barima.

I am at the same time to transmit to you, for the information of Mr. Secretary Chamberlain, copy of a further dispatch from Mr. Haggard, His Majesty's minister at Caracas,<sup>c</sup> who reports that he is unable to obtain from the Venezuelan Government a reply to his last communication to them on the subject.

In these circumstances, and in view of the present political situation in Venezuela, it appears to Lord Lansdowne that until the result of Mr. Haggard's representations has been ascertained, no further action can usefully be taken in the matter.

I am, etc.,

F. H. VILLIERS.

*Mr. Haggard to the Marquess of Lansdowne—(Received July 16).*

No. 105.]

CARACAS, June 24, 1902.

MY LORD: I have the honor to inclose copy of a note which I have addressed to the Venezuelan minister for foreign affairs relative to the case of the *In Time*.

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure.]

*Mr. Haggard to General Ferrer.*

CARACAS, June 21, 1902.

M. LE MINISTRE: I regret to have to bring the following circumstances before the Venezuelan Government:

On or about the 1st May the Venezuelan gunboat *General Crespo*, according to the sworn testimony of Joachim Rodriguez, supported by general knowledge and information, was at Perdernales, where the British ship *In Time* was lying with the sails unbent. A number of the crew of the *General Crespo* went on board the *In Time* and broke her up. She then drifted down the river and sunk about half a mile from her original moorings.

There does not appear to have been any provocation for this action, and I have the honor to request your excellency to state for the information of His Majesty's Government the steps which the Venezuelan Government propose to take in view of what was apparently a wanton destruction by a Venezuelan gunboat of a British vessel.

I avail, etc.,

W. H. D. HAGGARD.

*Mr. Haggard to the Marquess of Lansdowne—(Received July 16).*

No. 106.]

CARACAS, June 30, 1902.

MY LORD: I have the honor to inclose a copy of a note which I have addressed to the Venezuelan Government, as well as one of a dispatch from the British vice-consul at La Guayra, forwarding affidavits with reference to the seizure by a Venezuelan man-of-war on the high seas of the British vessel *Queen*, belonging to Grenada, on her way to Trinidad in ballast.

It appears that after seizure, the ship was towed into the Venezuelan port of Porlamar, there stripped of her sails and papers, and finally confiscated on a mere suspicion of having carried a cargo of arms, the crew being put on shore and left destitute.

I requested the minister for foreign affairs on the 18th instant, at the close of my note, to inform me of the steps that the Venezuelan Government intended to take with reference to this charge, in which more than one important question was involved, but I have received no reply to this inquiry.

I have, etc.,

W. H. D. HAGGARD.



[Inclosure 1.]

*Declaration by John Patrice.*

I, John Patrice, captain of the British sloop *Queen*, of the island of Grenada, hereby make the following declaration on oath:

On the 12th of May last I left Grenada in the *Queen* bound for Trinidad in ballast. There were two other men on board with me, Nelson and Willie Patrice. On the 15th we got becalmed 8 or 9 miles off the Venezuelan coast, about 20 miles east of Carúpano, where the wind and tide had brought us, and, on seeing a steamer approaching, we hoisted the British flag. It turned out to be the Venezuelan gunboat *Restaurador*, which boarded us and took our clearance. I and one of my men were then taken aboard the steamer and carried to Carúpano, where we remained one day. The sloop was put in charge of two men (Venezuelans) from the *Restaurador*, who, together with Willie Patrice—left on board—took it to Porlamar, Margarita. When the *Restaurador* got to Porlamar next evening we were released. We found that the sloop had been stripped of her sails, and her papers had been taken away. I also lost \$25 in cash, and our good clothes and other belongings had disappeared. The commandant at Porlamar then told me to go to Juan Griego, where I saw the collector of customs and the fiscal judge, who sent me back to Porlamar to fetch the sloop, giving me to understand that it would afterwards be delivered up to me. The sails were put back on the sloop and, on my arriving at Juan Griego with it, accompanied by three Venezuelan soldiers, put on at Porlamar, I was told that the vessel had been confiscated because I was suspected of having carried a cargo of arms. We then returned to Porlamar on foot, and led a precarious existence, for the commandant refused us any assistance. We remained there twenty-seven days until the captain of a Venezuelan sloop, called the *Maria de Lourdes*, took pity on us and brought us to La Guaira, where we arrived this morning.

JOHN ABRAHAM PATRICE.

We, the undersigned, Nelson Patrice and, Willie Patrice, declare on oath that the statements made by John Patrice in the foregoing affidavit are correct and true.

NELSON (his x mark) PATRICE.

WILLIE (his x mark) PATRICE.

Sworn to and signed by John Abraham Patrice, Nelson Patrice, and Willie Patrice at La Guaira on the 14th day of June, 1902, before me.

L. SCHUNK, *British Vice-Consul*.

BRITISH VICE-CONSULATE.

[Inclosure 2.]

*Mr. Haggard to General Ferrer.*

CARACAS, June 18, 1902.

M. LE MINISTRE: I have the honor to inclose a sworn declaration made by a British subject named John Patrice, captain of the British sloop *Queen*, supported by the sworn declaration of Nelson Patrice and Willie Patrice, of the truth of John Patrice's statement, recounting the circumstances connected with the confiscation of that ship by the Venezuelan war ship *Restaurador*.

From this account it would appear that an English ship trading between

The statements of fact were in each case supported by sworn declarations. The Venezuelan Government justified the action of their *guarda costa* by declaring that they considered Patos as belonging to Venezuela, and by stating that the *Sea Horse* was thought to be engaged in smuggling. No proof of this was, however, adduced, nor did there appear to be any reasonable ground for the assumption. This plea was subsequently amended by the further statement that the *Sea Horse* was suspected of landing arms, but the Venezuelan version of the fact proves that she never touched the coast and could not therefore have landed arms, while it was not even alleged that after being chased to Patos where she was seized she had any arms on board.

- The explanations offered after six months' correspondence were wholly unsatisfactory, and, as His Majesty's minister states in his last dispatch received on this subject, "no redress has been offered for an act which, even according to their own account (i. e., that of the Venezuelan Government) and if their assumed possession of the island be allowed, was one of unjustifiable violence."

#### CASE OF THE "MARÍA TERESA."

In January, 1901, the sloop *María Teresa*, the property of a British subject, but flying the Venezuelan flag, was, when about to leave the Venezuelan port of Guaira, compelled to heave to, and ordered to proceed to Trinidad instead of to her destination at Yrapa on the mainland. On the *María Teresa* proceeding to follow these instructions, she was boarded by a boat from the *Miranda*, which took off the master and two sailors, and after seizing the property on board the *María Teresa* set on fire and completely destroyed her.

The Venezuelan Government, in justification of the *Miranda's* action, contended that the owner and master of the sloop had been actively engaged in assisting the revolutionists. Although the treatment of the British subjects on board the sloop afforded ground for remonstrance, His Majesty's Government, in view of these statements, which were not, however, supported by proof, forebore to press the matter strongly, as there was some evidence that the vessel had been in communication with, if not in the employ of, the revolutionary party. Further inquiry and explanations were promised.

#### CASE OF THE "PASTOR."

The case of the *Pastor*, however, afforded still stronger ground for protest. On the 30th August last year the Venezuelan-owned sloop *Pastor* left Port of Spain with a cargo of goods and with three passengers, one of whom at least was a British subject.

There is some evidence to show that the *Pastor*, in conjunction with

three other boats of Venezuelan nationality, was engaged on a smuggling venture. On her arrival at Patos Bay the Venezuelan revenue boat *Totumo* appeared on the scene, and after examining the papers and cargo of the *Pastor* landed some of her crew on the island, seized and carried on board goods which had been there deposited by the *Pastor*, and took the men engaged in the expedition as prisoners. She subsequently fired on the *Pastor* when that vessel was still in British waters.

The correspondence exchanged with the Venezuelan Government with reference to this incident made it clear that they were determined to consider and to treat Patos as belonging to the Republic. In these circumstances it was thought expedient to record a formal protest against this renewed and gross violation of British territorial waters by a Venezuelan gunboat, which the facts that the *Pastor* was a Venezuelan vessel, and had infringed the customs regulations of Trinidad, were not held in any way to justify.

His Majesty's minister accordingly made a strong remonstrance with reference to this incident, but the Venezuelan Government stated that they could not make any investigation with regard to the violation of British territory, as they considered Patos Island, on which the violation of territory occurred, as their own legitimate possession.

#### CASE OF THE "INDIANA."

A further case of the violation of British rights occurred in January last in the seizure and detention of the British owned and registered sloop *Indiana* in the River Barima, within Venezuelan territory, the waters of which are, by the terms of the Anglo-Venezuelan boundary award, open to the navigation of all nations in time of peace.

In this instance the vessel, which carried only a cargo of empty barrels used for the conveyance of corn to the market of Georgetown, was suspected of smuggling, seized and carried into the Venezuelan port of Amakuru, the captain escaping in a native canoe.

There was no evidence to support this charge of smuggling, and the colonial authorities, to whom the case was reported, point out that the confiscation of the vessel was an excessively severe penalty for any infraction of the customs laws, if such were deemed to have occurred.

The representations made to the Venezuelan Government have hitherto failed to elicit any explanation.

#### CASE OF THE "IN TIME."

A more recent instance of a similar character is the destruction of the British vessel *In Time* by the Venezuelan gunboat *General Crespo*, in the Venezuelan harbor of Pedernales on or about the 1st May last.

It appears that on the arrival of the gunboat *General Crespo* in Pedernales orders were given to seize all craft in port, and this was done. No provocation or justification of this order has been assigned. The *In Time* was then fired on by the gunboat, and an armed party from the *Crespo* boarded her and broke her up. She subsequently drifted down the river and sank.

In connection with this case, His Majesty's minister was instructed to inform the Venezuelan Government that unless they could disprove the reports received as to the destruction of this vessel, His Majesty's Government might be obliged to cease extending the hospitality of British ports to Venezuelan cruisers.

The Venezuelan Government have protested against the "menacing tone" of this communication, which they consider "inadmissible" even as a simple notification.

#### CASE OF THE "QUEEN."

The seizure on the high seas of the British ship *Queen*, of Grenada, reported by His Majesty's minister in June, is the latest instance of such unwarrantable interference.

In this case it appears, from sworn evidence, that the vessel while on her voyage from Grenada to Trinidad in ballast, was overhauled by the Venezuelan gunboat *Restaurador* some 20 miles off Carupano; that after the seizure the *Queen* was towed into the Venezuelan port of Porlamar, there stripped of her sails and papers, and finally confiscated on a mere suspicion of having carried a cargo of arms to Venezuela, the crew being put on shore and left destitute.

The master and one of the crew, after remaining there twenty-seven days, obtained a passage on a Venezuelan sloop and found their way to La Guaira, where they reported themselves to the British vice-consul.

The facts having been brought to the knowledge of His Majesty's minister, he at once addressed a representation to the minister for foreign affairs and requested "to be informed what steps the Venezuelan Government intended to take with reference to this charge, in which more than one important question was involved."

The action of the Venezuelan consul at Trinidad, Señor Figueredo, has also given rise to grave complaints with reference to his issuing irregular clearances, exaction of improper fees and charges, and assumption of unwarranted authority by the collection of customs dues for Venezuela in Trinidad.

He has, further, in some cases, refused to accept dispatch of vessels for Venezuela on the ground that they belonged to persons who were not acceptable to the Venezuelan Government, and in others is stated to have placed every sort of hindrance in the way of the dispatch of vessels, thus seriously prejudicing the trade of British subjects at Trinidad.

M. Figueredo's conduct was brought to notice especially in connection with his refusal to dispatch the British registered lighter *Euterpe*, belonging to the Compagnie Générale des Asphaltes de France, when he informed the company that if the vessel was otherwise dispatched she would be seized or sunk as soon as she was outside British waters.

His Majesty's minister has been instructed to protest against M. Figueredo's action, and to inform the Venezuelan Government that unless satisfactory assurances were forthcoming, no exequatur would be issued to their consul. Of this communication no notice has been taken.

Besides these specific outrages and grounds of complaint there are cases in which British subjects and companies have large claims against the Venezuelan Government.

The Venezuelan Government declines to accept the explanations and assurances of His Majesty's Government with regard to the *Ban Righ* as in any way modifying the situation. As a result, the position of His Majesty's legation at Caracas has been rendered for diplomatic purposes quite impracticable, as all representations, protests, and remonstrances now remain disregarded and unacknowledged.

FOREIGN OFFICE, *July 20, 1902.*

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*The Marquess of Lansdowne to Mr. Buchanan.*

No. 109.]

FOREIGN OFFICE, *July 23, 1902.*

SIR: The German ambassador spoke to me to-day about the state of affairs in Venezuela. I told his excellency that we had various causes of complaint against the Venezuelan Government, and that we intended to obtain satisfaction for the claims of British subjects. We should be quite ready to confer with the German Government with a view to joint action.

I am, etc.,

LANSDOWNE.

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*The Marquess of Lansdowne to Mr. Haggard.*

[Telegram.]

No. 110.]

FOREIGN OFFICE, *July 29, 1902.*

The liberty and property of British subjects have, in a succession of cases, been interfered with in a wholly unwarrantable manner by the Venezuelan Government. The following incidents have been the subject of serious consideration by His Majesty's Government:

The action of the gunboat *Augusto* in seizing and deporting certain

British subjects in January 1901; the seizure of John Craig's boat and property on Patos Island in the February following; the similar interference on the same occasion in the case of the *Buena Fe*, which was accompanied by violation of territory; and the cases of the vessels *María Teresa*, *Pastor*, *Indiana*, and *In Time*.

No satisfactory explanations have been received from the Venezuelan Government in any of these cases. The destruction of the British ship *Queen* is a still more flagrant instance of such interference.

His Majesty's Government can not tolerate a continuance of the conduct which culminated in the last-mentioned incident, and you should address a formal protest respecting it to the Venezuelan Government. You should intimate to the President and the minister for foreign affairs, in unmistakable terms, that unless His Majesty's Government receive explicit assurances that incidents of this nature shall not recur, and unless the Venezuelan Government promptly pay to the injured parties full compensation wherever satisfactory evidence has been furnished to His Majesty's Government that such is justly due, His Majesty's Government will take such steps as may be necessary to obtain the reparation which they are entitled to demand from the Venezuelan Government in these cases, as well as for any loss to British subjects caused by the unjustifiable conduct of the acting Venezuelan consul at Trinidad, and on account of the railway claims.

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*Mr. Haggard to the Marquess of Lansdowne—(Received August 2).*

No. 111.]

CARACAS, July 12, 1902.

MY LORD: With reference to my dispatch of the 24th June, I have the honor to inclose a copy of the note which, in accordance with the instructions contained in your lordship's telegram of the 11th instant, I have addressed to the Venezuelan Government, informing them that, unless they are able to disprove the reports which His Majesty's Government have received relative to the destruction of the British ship *In Time*, they may be obliged to cease extending to Venezuelan cruisers the hospitality of British ports.

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure 1.]

*Mr. Haggard to Señor Baralt.*

CARACAS, July 12, 1902.

M. LE MINISTRE: In my note of the 21st ultimo I had the honor of informing your excellency's predecessor that on or about the 1st May a number of the crew of the *General Crespo*, a Venezuelan gunboat, went on board the schooner *In*



*Time*, which was lying at Pedernales at anchor with her sails unbent, and destroyed her.

I at the same time asked his excellency to be good enough to inform me as to the steps which the Venezuelan Government proposed to take in view of what was apparently the wanton destruction by a Venezuelan gunboat of a British vessel.

I have now the honor to inclose a copy of the affidavit of Joachim Rodríguez, a witness of this occurrence, whose testimony is, I may add, not unsupported.

I regret that I should have received no reply to my communication, and I am now instructed by telegraph, by the Marquis of Lansdowne, His Majesty's principal secretary of state for foreign affairs, to inform the Venezuelan Government that, unless they are able to disprove the reports which His Majesty's Government have received with reference to the destruction of the British ship *In Time*, they may be obliged to cease extending to Venezuelan cruisers the hospitality of British ports.

I avail, etc.,

W. H. D. HAGGARD.

[Inclosure 2.]

*Affidavit of Joachim Rodríguez.*

I, Joachim Rodríguez, master of the open boat *Dios te Salve*, hereby make oath and say as follows:

About six days ago I was at Pedernales with my boat, and saw the gunboat *Crespo* arrive about 11 a. m. Before anchoring she fired two shots (cannon) into the village. After anchoring, two boats' crews of about 20 men put off from the *Crespo* and seized two large boats and several small ones.

I saw the schooner *In Time* at anchor, the sails unbent. Two British subjects, whose names I do not know, left the schooner as soon as the *Crespo* fired at the village, leaving nobody on board. I was on shore hiding, about 300 yards from the *In Time*.

One of the *Crespo's* boats boarded the *In Time*, hoisted her anchor, and towed her to the *Crespo*, and made her fast to that vessel. Several small boats were destroyed—all in the port, in fact; then the crew of the *Crespo* turned their attention to the schooner, a number of men going on board, carrying implements, the exact nature of which I was too far away to identify. By their movements on board (making the motion of striking) I knew that they were breaking up the vessel. Meanwhile, she was being towed down the river by the gunboat and gradually getting lower in the water. After going about half a mile the *Crespo*, having cast her off about a mile from the *Crespo's* original anchorage, the hull of the schooner disappeared, her masts remaining visible.

I did not see her again.

I am an American citizen and was born in Boston. I have been in Venezuela since I was 9 years old.

My own boat I, this deponent, had previously secreted in a creek, and she escaped destruction.

JOACHIM (his x mark) RODRÍGUEZ.

Sworn at the court-house in the town of Port of Spain, in the island of Trinidad, the 7th day of May, 1902, the contents of this affidavit having been by me fully explained to the deponent, and he having understood the same, and having placed his mark thereto in my presence.

Before me,

ERNEST D. CLARK,  
*Commissioner of Affidavit.*

*Mr. Haggard to the Marquess of Lansdowne—(Received August 2).*

No. 112.]

CARACAS, July 13, 1902.

MY LORD: On the receipt of your lordship's telegram of the 3d instant on the subject of the steamship *Ban Righ*, I lost no time in addressing the note to the Venezuelan Government, of which I have the honor to inclose a copy.

I have also the honor to state that I have received no answer to this communication.

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure.]

*Mr. Haggard to General Ferrer.*

CARACAS, July 4, 1902.

M. LE MINISTRE: In my note of the 8th April, I had the honor of informing your excellency's predecessor of the friendly intentions of His Majesty's Government toward that of Venezuela with reference to the *Ban Righ*. These were briefly that unless the Colombian Government gave assurances:

1. That the vessel in question is a Colombian public ship; and
2. That she will not in future be allowed to take part in any hostile acts against Venezuela; she would not be allowed to refit in Port of Spain; and, in a note verbale of the next day's date I added that it would be necessary to await the result of the communications with the Colombian Government.

I have now the honor to inform your excellency that I have learnt from the Marquis of Lansdowne, His Majesty's principal secretary of state for foreign affairs, that the result of those communications is that His Majesty's Government have received satisfactory assurances from the Colombian Government: Firstly, that the *Ban Righ* belongs to them; in the second place, that so long as no state of war exists between Venezuela and Colombia they will not authorize her being used for the purpose of committing hostile acts against this country.

I have further been informed by his lordship that orders have been issued that the ship shall proceed to and be stationed in Colombian waters, and that the governor of Trinidad has been instructed to permit her to refit at Port of Spain and to proceed to those waters.

I avail, etc.,

W. H. D. HAGGARD.

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*Mr. Haggard to the Marquess of Lansdowne—(Received August 2).*

No. 113.]

CARACAS, July 13, 1902.

MY LORD: On the receipt of your lordship's dispatch of the 9th ultimo I addressed a note to the Venezuelan Government, stating that His Majesty's Government can not admit that there is any connection between the question of the Bolivar Railway and that of the *Ban Righ*, and can not acquiesce in the attempt of the Venezuelan Government to postpone dealing with other pending questions until that of the *Ban Righ* is disposed of.

I have the honor to inform your lordship that I have received no answer to this communication.

I have, etc.,

W. H. D. HAGGARD.

*Mr. Haggard to the Marquess of Lansdowne—(Received August 5).*

[Telegram.]

CARACAS, August 5, 1902.

In reply to the representations made in accordance with your telegram of the 29th July, the Venezuelan Government state that, in their opinion, some of the cases mentioned have been already settled, and that, in consequence of the partiality toward the revolutionaries displayed by the government of Trinidad, and pending a settlement of the complaints relative to the *Ban Righ*, they have determined to postpone the others.

They reiterate that they can not entertain other cases unconnected with the *Ban Righ* until that case is satisfactorily settled; with regard to it they refer to their previous decisions. They further state that the conduct of the acting Venezuelan consul at Trinidad must necessarily be taken into consideration in relation to the friendly attitude of the colonial authorities toward the revolutionaries.

The alternative given by His Majesty's Government is ignored.

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*Foreign office to Admiralty.*

No. 115.]

FOREIGN OFFICE, August 8, 1902.

SIR: I am directed by the Marquis of Lansdowne to request you to inform the lords commissioners of the Admiralty that for the past two years His Majesty's Government have had grave cause to complain on various occasions of unjustifiable interference on the part of the Venezuelan Government with the liberty and property of British subjects.

The successive instances which have occurred since the beginning of last year are set forth in the accompanying memorandum.<sup>a</sup> No efforts have been spared by Mr. Haggard, His Majesty's minister at Caracas, in his endeavors to obtain an amicable settlement of these cases. In none of them have satisfactory explanations been forthcoming, and latterly the representations of His Majesty's minister not only received no attention, but remained unnoticed.

The destruction of the British ship *Queen*, reference to which will be found in the memorandum, was considered so flagrant a case that it was felt that a continuance of such conduct could no longer be tolerated.

A telegram, copy of which is inclosed,<sup>b</sup> was accordingly sent to Mr. Haggard, instructing him to record a formal protest against the conduct of the Venezuelan Government, and to intimate in unmistakable terms to the President and minister for foreign affairs that unless

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<sup>a</sup> No. 108.

<sup>b</sup> No. 110.

explicit assurances were received that such incidents should not recur, and unless full compensation were promptly paid to the injured parties, wherever shown to the satisfaction of His Majesty's Government to be justly due, they would take such steps as might be necessary to exact the reparation to which they were entitled.

A telegram, copy of which is also inclosed,<sup>a</sup> has been received from Mr. Haggard, conveying the reply of the Venezuelan Government to this protest. It will be seen that no practical attention has been paid to the remonstrance of His Majesty's Government, and that the threat to take such steps as may be necessary to exact reparation has been ignored.

Lord Lansdowne is of opinion that the time has arrived when stronger measures must be resorted to for the purpose of bringing the Venezuelan Government to a sense of their international obligations. His lordship would therefore be glad to be favored with the views of the Lords Commissioners as to the most effectual and convenient manner of putting pressure on the Venezuelan Government.

I am to add that, in conversation with Lord Lansdowne, Count Metternich, the German ambassador, has suggested that the powers concerned should take part in a joint naval demonstration.

I am, etc.,

F. H. VILLIERS.

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*Colonial office to foreign office—(Received August 12).*

No. 116.]

The under-secretary of state for the colonies presents his compliments to the under-secretary of state for foreign affairs, and is directed by the secretay of state to transmit, for the information of the Marquis of Lansdowne, a copy of a dispatch from the acting governor of Trinidad, with inclosures, on the subject of the seizure of the British sloop *Queen* by the Venezuelan gunboat *Restaurador*.

DOWNING STREET, August 11, 1902.

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[Inclosure 1.]

*Acting Governor Knollys to Mr. Chamberlain.*

GOVERNMENT HOUSE,

*Trinidad, July 16, 1902.*

SIR: I have the honor to report that the British sloop *Queen* is said to have been seized by the Venezuelan gunboat *Restaurador* on the high seas between Grenada and Trinidad on or about the 12th May.

2. I inclose copies of evidence given by two of the crew, the only ones who have come to Trinidad.

3. I suppose this matter will be also reported by the British minister at Caracas and the governor of the Windward Islands.

I have, etc.,

C. C. KNOLLYS.

[Inclosure 2.]

*Evidence of John A. Patrice.*

John A. Patrice, sworn, saith:

I was the master of the British sloop *Queen*, which left Grenada on the 12th May last for the island of Trinidad in ballast, with a crew of three, including myself. On the way down, when we were about 30 miles from the mainland of Venezuela, I saw a steamer heading toward us, but could not make her flag out. I immediately heaved to and exhibited my flag (red ensign). By this time I discovered her to be the Venezuelan gunboat *Restaurador*.

She ran up alongside my vessel and boarded us, and the captain ordered me to go on board the gunboat. I immediately did so, accompanied by my cousin, Nelson Patrice (who formed one of the crew). I showed him my clearance from the collector of customs at Grenada, which he kept. He then detained us on board and dispatched two men from the gunboat to take charge of the sloop with instructions to head her for Margarita. The *Restaurador* then proceeded to Carupano. The captain gave me no reason for acting in this manner. When the gunboat arrived at Carupano, on the 15th, she remained there for a day and left next evening for Margarita. During that time we were well treated on board. On arriving at Margarita the captain landed us and then left immediately for sea. I saw my sloop inbended [sic] anchored in the harbor. All my things, among which was the sum of \$25, as well as those of the crew, had been removed, as had also the sails, lamp, etc., belonging to the sloop. I went to the collector of customs there and told him all that had happened, and what the captain of the *Restaurador* had done to us, but he said he could do nothing until he had communicated with the minister at Juan Griego. We waited eighteen days for an answer, and not hearing from him we walked to the place from Margarita and had an interview with the minister. I explained to him what took place, and he then said, "I will give you a dispatch." He then handed me a letter addressed to the commandant at Margarita, which I gave to him on my arrival at that place. He opened it and read it, and told us to "fix up everything." We did so, replacing what was given to us back on the sloop. After this the commandant ordered us on shore and gave instructions to have us put in prison. Next morning, in the company of three armed soldiers, we were placed back on the sloop *Queen*.

I was then ordered by the commandant and soldiery to set sail for Juan Griego, and arrived there on a Monday morning; I do not remember the exact date. We were accompanied on shore by the soldiers and brought to the minister of that place. We explained to him our position, and he told us, through an interpreter, that the vessel belonged to the Government, but that he would let us go free. We then walked back again to Margarita, remained there for twenty-seven days, and begged a passage to La Gualra, and from thence came on to Trinidad by the Royal Mail steamer, and on our arrival reported the circumstances to the harbor master.

JOHN A. PATRICE.

Taken and sworn to at Port of Spain in Trinidad this 2d day of July, 1902.  
Before me:

A. S. BOWEN, *Justice of the Peace.*

[Inclosure 3.]

*Evidence of George Patrice.*

George Patrice, sworn, saith:

I was one of the crew of the British sloop *Queen*, and am a cousin of the master, John A. Patrice.

On the 12th May last we left Grenada for Trinidad in ballast, and when nearing that place the wind fell, and we drifted toward the coast of Venezuela. We were about 12 miles from Carupano when we sighted a steamer coming toward us from the west. She had no colors flying, but when she neared us we made her out to be a Venezuelan gunboat, and she hoisted her colors; we were already flying the red ensign. She then came alongside of us, and we made her out to be the gunboat *Restaurador*.

They did not tell us anything when they ran alongside, but sheered off, and sent a boat with 6 men in it to board us. When they got alongside they came on board and ordered the master, John A. Patrice, to get in and go with them on board the gunboat. Patrice took his clearance from the collector of customs at Grenada, to show to the captain of the *Restaurador*. A little while after the boat returned with some men, who were put in charge of the sloop, and the other man, William Patrice, and myself were taken on board the gunboat. We were kept on deck, and an armed guard was placed over us. We were fairly well treated, but once or twice they made signs to us to the effect that when we reached Margarita we should be hanged. The steamer then went to Carupano, and the sloop was ordered to proceed to Margarita. We reached the former place at about 3 a. m. on the 16th May last, and left about 7 o'clock in the evening for Margarita, reaching there at 10 o'clock the same night. We were then taken on shore and left on the wharf. On the next morning the gunboat left the port, and we then went on board of the *Queen*, which had reached there on the previous day. We found no one on board, but the sails, etc., had been unbended. A little while after some soldiers came and searched the vessel, and we were taken prisoners and conveyed on shore and brought before the commandant, but he did not tell us anything. We were allowed to go free, and stayed with a man by the name of George Cato, a native of Grenada; we spent twenty-seven days with him.

During that time we went to Juan Griego, and laid our case before the governor of the town. He took our names and gave us a letter to the commandant of Margarita, which we delivered. We were then ordered to go on board the sloop and bend the sails. Three soldiers were sent on board, and we were made to navigate the *Queen* to Juan Griego. When we got there the governor of that place told us that our vessel had been seized and belonged to the Venezuelan Government. We were then set free, and started back to Margarita, and begged a passage by a sloop to La Guaira, where we saw the British consul and reported the matter to him. He then provided us with a passage to Trinidad.

(Signed)

GEORGE (his x mark) PATRICE.

Taken and sworn to at Port of Spain, Trinidad, this 2d day of July, 1902.  
Before me.

A. S. BOWEN,  
*Justice of the Peace.*

Witness to mark:

EL. F. AANENSEN.



*Mr. Haggard to the Marquess of Lansdowne—(Received August 14).*

No. 117.]

CARACAS, *July 17, 1902.*

MY LORD: In my dispatch of the 12th instant I had the honor of forwarding a copy of the note which, by your lordship's instructions, I addressed to the Venezuelan Government, informing them that unless they were able to disprove the reports which His Majesty's Government had received with reference to the destruction of the British ship *In Time*, the latter may be obliged to cease extending to Venezuelan cruisers the hospitality of British ports.

I have now the honor to inclose a translation of the reply of the Venezuelan Government, protesting against the "menacing tone" of your lordship's communication, "which is incomprehensible to them, as the action in question would be not only at variance with, but in open opposition to, the friendly commercial and political relations which exist between Venezuela and Great Britain."

The note goes on to say that, therefore, the Venezuelan Government consider the warning of His Majesty's Government as "inadmissible, even as a simple official notification."

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure.—Translation.]

*Señor Baralt to Mr. Haggard.*

CARACAS, *July 16, 1902.*

M. LE MINISTRE: In your note of the 12th, your excellency refers to a matter which had already formed the subject of a former one of a recent date, and sends a declaration about it upon which that note is based, which makes allegations against a Venezuelan gunboat. You state finally that, unless the reports received about this affair are refuted or disproved, His Majesty's Government may find themselves obliged to discontinue offering the hospitality of British ports to the cruisers of Venezuela. The Government of the Republic can not refrain from expressing their surprise at, and making their protest against, the menacing tone of this expression, which is incomprehensible to them, as the action in question would be not only at variance with, but in open opposition to, the friendly commercial and political relations which exist between Venezuela and Great Britain. Accordingly, in the opinion of the Government, your excellency's expression is inadmissible, even as a simple official notification.

Accept, etc.,

R. LOPEZ BARALT.

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*Mr. Haggard to the Marquess of Lansdowne—(Received August 14).*

[Extract.]

No. 118.]

CARACAS, *July 19, 1902.*

In my dispatch of the 13th instant I had the honor to forward a copy of a note, in which I conveyed to the Venezuelan Government

that His Majesty's Government had received satisfactory assurances from the Colombian Government, firstly, that the *Ban Righ* belonged to them, and, secondly, that, so long as no state of war existed between Venezuela and Colombia, they would not authorize her being used for the purpose of committing hostile acts against Venezuela, and, further, that orders had been issued that the ship should proceed to and be stationed in Colombian waters; and that the governor of Trinidad had been instructed to permit her to refit at Port of Spain and to proceed to those waters.

I have now the honor to inclose a translation of the reply of the Venezuelan Government to that communication.

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[Inclosure.—Translation.]

*Señor Baralt to Mr. Haggard.*

CARACAS, July 16, 1902.

**M. LE MINISTRE:** In the communication which your excellency addressed on the 4th instant to General Ferrer, you forwarded to the Venezuelan Government by direction of His Majesty's Government the result of inquiries with reference to the ship *Ban Righ*, which your excellency yourself had promised this department on the 8th April. The vice-president charged with the executive power has taken note of the full assurances which the Government of His Majesty has given with reference to that ship, but these do not alter for the Government of Venezuela the point of view from which it has, from the beginning, regarded that ship, and which now compels it to protest solemnly against her being recognized by Great Britain as one which is not to be considered as outside international law.

In like manner the above-mentioned assurances can not restrict nor detract in the slightest manner from the rights claimed by Venezuela arising from former circumstances from the time of the dispatch of the *Ban Righ* from English ports with the English flag and papers until the subsequent committal by that boat—already declared a pirate—of acts directly prejudicial to the commerce, peace, and general interests of the Republic.

I avail, etc.,

R. LOPEZ BARALT.

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*Mr. Haggard to the Marquess of Lansdowne—(Received August 14).*

No. 119.]

CARACAS, July 27, 1902.

**MY LORD:** In my dispatch of the 13th July I had the honor of stating to your lordship that I had on the 4th instant addressed a note to the Venezuelan Government, stating that His Majesty's Government could not admit that there was any connection between the question of the Bolivar Railway and that of the *Ban Righ*, and could not acquiesce in the attempt of the Venezuelan Government to postpone dealing with other questions until that of the latter was disposed of.

I have the honor to state that I have not yet received any reply to my note.

I have, etc.,

W. H. D. HAGGARD.

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*Admiralty to Foreign Office—(Received August 15).*

[Extract.]

No. 120.]

ADMIRALTY, August 14, 1902.

I have laid before my lords commissioners of the Admiralty your letter of the 8th instant, in which you refer to the numerous instances of unjustifiable interference on the part of the Venezuelan Government with the liberty and property of British subjects, and state that, in the opinion of the secretary of state for foreign affairs, the time has now arrived when stronger measures than those heretofore adopted must be resorted to, for the purpose of bringing that Government to a sense of its international obligations.

If it should be decided by His Majesty's Government to put pressure on Venezuela in order to obtain satisfaction for the acts of aggression committed by that country on British shipping or against British interests, my lords would be prepared to direct the commander in chief on the North America and West Indies station to establish a blockade of such ports on the Venezuelan coast as may be selected for this purpose, on the understanding that the blockade should be deferred until November, when the unhealthy season is over.

The places selected for blockade would be La Guaira, Puerto Cabello, and possibly three other ports where railways terminate, and also the port of Maracaibo, which is visited by a larger number of vessels than any other port on the Venezuelan coast. Some, if not all, of these ports could be effectively blockaded by the present squadron on the station.

Should His Majesty's Government as a matter of policy consider it desirable to adopt the suggestion of the German ambassador, that "the two powers concerned should take part in a joint naval demonstration," their lordships consider that a blockade in Venezuelan waters would be the best method of giving effect to it.

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*Colonial Office to Foreign Office—(Received August 20).*

No. 121.]

The under secretary of state for the colonies presents his compliments to the under secretary of state for foreign affairs and is directed by the secretary of state to transmit, for the information of the Marquis of Lansdowne, with reference to the letter from this depart-

ment of the 11th instant, a copy of a dispatch on the subject of the seizure of the British sloop *Queen* by the Venezuelan gunboat *Restaurador*.

DOWNING STREET, *August 19, 1902.*

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[Inclosure 1.]

*Acting Governor Sir C. Knollys to Mr. Chamberlain.*

GOVERNMENT HOUSE,  
*Trinidad, July 31, 1902.*

SIR: In continuation of my dispatch of the 16th instant, I have the honor to forward the inclosed copy of a statement made by John A. Patrice, owner of the sloop *Queen*, which was seized by the Venezuelan gunboat *Restaurador*.

I have, etc.,

C. C. KNOLLYS.

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[Inclosure 2.]

*Declaration by John Augustus Patrice.*

I, John Augustus Patrice, having been duly sworn, say:

I am a British subject, and was born in Carriacou in the year 1869. I am the sole owner of the sloop *Queen*, built for me in Carriacou in the year 1899 by Jacob Patrice. The vessel is of 9 tons burden and cost me \$800. There is no mortgage upon her.

Until April this year I worked on the coast of Grenada, and did not register the vessel. In April, 1902, I registered her at the customs-house, St. George's, Grenada, as I desired to trade intercolonially.

I first went to St. Vincent, then to St. Lucia, then I returned to Grenada; and I was on my way to Trinidad when seized by the Venezuelan gunboat *Restaurador*.

My certificate of registry, as well as all of my other papers, was taken from me, and though I asked specially for the return of that document, I did not obtain it, nor have I since obtained it.

JOHN A. PATRICE.

Sworn before me at Port of Spain, Trinidad, this 28th day of July, 1902.

A. S. BOWEN,  
*Commissioner of Affidavits.*

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*Mr. Haggard to the Marquess of Lansdowne—(Received August 28).*

[Extract.]

No. 122.]

CARACAS, *August 1, 1902.*

I have the honor to inclose a copy of the note which I addressed to the Venezuelan Government, embodying the instructions conveyed to me by your lordship in your telegram of the 29th ultimo, to record a formal protest with regard to the past intolerable conduct of the

Venezuelan Government in interfering with the liberty and property of British subjects, and to intimate in unmistakable terms that, unless explicit assurances were received that such incidents should not recur, and unless full compensation were paid promptly to the injured parties wherever it was shown to the satisfaction of His Majesty's Government that such compensation was justly due, they would take such steps as might be necessary to exact the reparation which they have the right to demand in these cases, as well as on account of the claims against the Venezuelan Government of the British railway companies, as also for any loss caused by the unjustifiable conduct of the Venezuelan consul at Trinidad.

I took this note in person to the acting minister for foreign affairs and carefully translated it to him word for word, at the same time explaining and enlarging on it in terms about which there could certainly not be any possible mistake. At the close of each sentence I asked his excellency if he thoroughly understood it, and satisfied myself that he did so. I pointed out to him the extreme gravity of the communication, and said that he would thoroughly understand that it could only have been made after full and serious consideration, not only as to the communication itself, but as to the consequences which it involved; that, in fact, His Majesty's Government meant what they said, and that they did not use such words without fully intending to act up to them in case of need.

I therefore begged him to consider, and specially to induce the President to consider, the note very earnestly in view particularly of the serious consequences which might be expected to follow the refusal of the Venezuelan Government to comply with the just demands of His Majesty's Government.

His excellency accepted the note quietly; his final remark was that they were used to these communications. I said that that might be the case, but not from England; that his excellency must bear in mind that we had been extraordinarily patient; that His Majesty's Government was slow in taking such a weighty decision, but that they had the power to execute it when once taken.

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[Inclosure.]

*Mr. Haggard to Señor Baralt.*

CARACAS, July 30, 1902.

M. LE MINISTRE: I have the honor to state to your excellency that I have been informed by His Majesty's Government that they have had under their serious consideration a succession of cases in which the Venezuelan Government have interfered with the property and liberty of British subjects in a wholly unwarrantable manner.

*Mr. Haggard to the Marquess of Lansdowne—(Received August 2).*

No. 112.]

CARACAS, July 13, 1902.

MY LORD: On the receipt of your lordship's telegram of the 3d instant on the subject of the steamship *Ban Righ*, I lost no time in addressing the note to the Venezuelan Government, of which I have the honor to inclose a copy.

I have also the honor to state that I have received no answer to this communication.

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure.]

*Mr. Haggard to General Ferrer.*

CARACAS, July 4, 1902.

M. LE MINISTRE: In my note of the 8th April, I had the honor of informing your excellency's predecessor of the friendly intentions of His Majesty's Government toward that of Venezuela with reference to the *Ban Righ*. These were briefly that unless the Colombian Government gave assurances:

1. That the vessel in question is a Colombian public ship; and
2. That she will not in future be allowed to take part in any hostile acts against Venezuela; she would not be allowed to refit in Port of Spain; and, in a note verbale of the next day's date I added that it would be necessary to await the result of the communications with the Colombian Government.

I have now the honor to inform your excellency that I have learnt from the Marquis of Lansdowne, His Majesty's principal secretary of state for foreign affairs, that the result of those communications is that His Majesty's Government have received satisfactory assurances from the Colombian Government: Firstly, that the *Ban Righ* belongs to them; in the second place, that so long as no state of war exists between Venezuela and Colombia they will not authorize her being used for the purpose of committing hostile acts against this country.

I have further been informed by his lordship that orders have been issued that the ship shall proceed to and be stationed in Colombian waters, and that the governor of Trinidad has been instructed to permit her to refit at Port of Spain and to proceed to those waters.

I avail, etc.,

W. H. D. HAGGARD.

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*Mr. Haggard to the Marquess of Lansdowne—(Received August 2).*

No. 113.]

CARACAS, July 13, 1902.

MY LORD: On the receipt of your lordship's dispatch of the 9th ultimo I addressed a note to the Venezuelan Government, stating that His Majesty's Government can not admit that there is any connection between the question of the Bolivar Railway and that of the *Ban Righ*, and can not acquiesce in the attempt of the Venezuelan Government to postpone dealing with other pending questions until that of the *Ban Righ* is disposed of.

I have the honor to inform your lordship that I have received no answer to this communication.

I have, etc.,

W. H. D. HAGGARD.



*Mr. Haggard to the Marquess of Lansdowne—(Received August 5).*

[Telegram.]

CARACAS, August 5, 1902.

In reply to the representations made in accordance with your telegram of the 29th July, the Venezuelan Government state that, in their opinion, some of the cases mentioned have been already settled, and that, in consequence of the partiality toward the revolutionaries displayed by the government of Trinidad, and pending a settlement of the complaints relative to the *Ban Righ*, they have determined to postpone the others.

They reiterate that they can not entertain other cases unconnected with the *Ban Righ* until that case is satisfactorily settled; with regard to it they refer to their previous decisions. They further state that the conduct of the acting Venezuelan consul at Trinidad must necessarily be taken into consideration in relation to the friendly attitude of the colonial authorities toward the revolutionaries.

The alternative given by His Majesty's Government is ignored.

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*Foreign office to Admiralty.*

No. 115.]

FOREIGN OFFICE, August 8, 1902.

SIR: I am directed by the Marquis of Lansdowne to request you to inform the lords commissioners of the Admiralty that for the past two years His Majesty's Government have had grave cause to complain on various occasions of unjustifiable interference on the part of the Venezuelan Government with the liberty and property of British subjects.

The successive instances which have occurred since the beginning of last year are set forth in the accompanying memorandum.<sup>a</sup> No efforts have been spared by Mr. Haggard, His Majesty's minister at Caracas, in his endeavors to obtain an amicable settlement of these cases. In none of them have satisfactory explanations been forthcoming, and latterly the representations of His Majesty's minister not only received no attention, but remained unnoticed.

The destruction of the British ship *Queen*, reference to which will be found in the memorandum, was considered so flagrant a case that it was felt that a continuance of such conduct could no longer be tolerated.

A telegram, copy of which is inclosed,<sup>b</sup> was accordingly sent to Mr. Haggard, instructing him to record a formal protest against the conduct of the Venezuelan Government, and to intimate in unmistakable terms to the President and minister for foreign affairs that unless

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<sup>a</sup> No. 108.

<sup>b</sup> No. 110.

jects, some of which, such as the capture of John Craig's boat and the proceedings against the sloop *María Teresa*, the Government of the Republic had considered as altogether disposed of. Another of these, relating to the islet of Patos, has been settled for some time by the Government of Venezuela without the slightest opposition being made by Great Britain on legal grounds, and the rest were already settled, or on the road to a settlement, even although an answer relating to them had been postponed owing to circumstances which need not again be dwelt on, as they are well known to His Majesty's legation. The chief of the executive power is consequently surprised both at your excellency's putting forward these facts and at the general tone of your note; and, in spite of all the questions which it raises, he does not consider it advisable to answer it immediately, owing to the fact that the Venezuelan Government decided to postpone dealing with matters of that and of an analogous character from the time when the *Ban Righ* committed her injurious acts and the Trinidad authorities showed such open partiality, in a sense hostile to the peace of Venezuela.

The surprise of the chief of the Government is the more justifiable inasmuch as your note raises a variety of questions, some of which have already been disposed of. And the British legation could surely not have considered the present a favorable opportunity for discussing even those questions which are still pending with this Government, seeing that no settlement has yet been arrived at relative to the complaints and remonstrances laid before Great Britain in consequence of the action of the *Ban Righ*, and of the attitude of the British authorities in connection with that vessel. Your excellency is aware that the right which supports Venezuela on this point is upheld by proofs preserved in the archives of this ministry, and you also know by the Venezuelan notes of the 28th February, of the 8th and 13th March, and of the 5th April last, that from that time the Venezuelan Government decided to postpone dealing with any other matters pending with the British legation until the settlement of the *Ban Righ* question, which is so ardently desired by the Venezuelan Government with a view to preserving their friendly relations with that of His Majesty.

This is, therefore, the occasion to state anew to your excellency that, so long as a matter of such importance is not settled satisfactorily to the interests of both nations, this ministry can not entertain others which are entirely foreign to that object.

The conduct which in your note you attribute to the consul in Trinidad is a matter which may be considered in relation with the partiality of the colonial authorities.

R. LOPEZ BARALT.

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*Mr. Haggard to the Marquess of Lansdowne—(Received September 12).*

No. 124.]

CARACAS, August 23, 1902.

My LORD: With reference to previous correspondence on the subject of the *In Time*, the acting governor of Trinidad has been good enough to forward me two more affidavits of witnesses of that outrage, confirming that of Joachim Rodriguez, so there can now be no doubt whatever about the case.

I observe also that one of these, J. Mozziconacci, declares in addition that the *In Time* was flying the British flag when she was seized and sunk.

I have, etc.,

W. H. D. HAGGARD.

*Admiralty to Foreign Office—(Received October 10).*

No. 125.]

ADMIRALTY, *October 10, 1902.*

SIR: I am commanded by my lords commissioners of the Admiralty to forward herewith, to be laid before the Marquis of Lansdowne, a copy of a letter, dated the 27th ultimo, from the commander in chief on the North America and West Indies station, relative to the measures in his opinion necessary to carry out the proposed naval demonstration off the coast of Venezuela.

My lords desire me to state that they anticipate no difficulty in giving effect to Sir Archibald Douglas's proposals, should they meet with Lord Lansdowne's concurrence.

I am, etc.,

C. I. THOMAS, *pro Sec.*

[Inclosure.—Extract.]

*Vice-Admiral Douglas to Admiralty.**"ARIADNE," at Halifax, September 27, 1902.*

I have the honor to acknowledge the receipt of Admiralty letter dated the 4th September last, directing me to be in readiness to carry out a naval demonstration off the coast of Venezuela in conjunction with ships of the Imperial German navy.

With reference to the second paragraph of the letter above quoted, be pleased to inform the lords commissioners of the Admiralty that I think it will be necessary, in order to bring effective measures to bear on the Venezuelan Government, to blockade the ports of La Guaira, Puerto Cabello, and Maracaibo, and other ports on the Venezuelan coast where railways terminate.

The most convenient time to commence operations will be toward the end of November, when the Newfoundland fishery season will have concluded and the vessels at present employed on that division will be available.

I propose, subject to the approval of their lordships, to place Commodore Montgomerie, of the *Charybdis*, in charge, with the following vessels under his orders: *Tribune*, *Retribution*, *Indefatigable*, torpedo-boat destroyers *Quail* and *Rocket*, and *Columbine* (special-service vessel).

The *Alert* and *Fantome* will also be available if required.

Having discussed the situation with Capt. C. H. Robertson, C. M. G., of the *Pallas*, who has recently been employed as senior naval officer of the Barbados division, and spent some considerable time in Venezuelan waters, and who is well acquainted with the state of affairs in that country, I would submit, as an alternative scheme to the blockade, that all the Venezuelan gunboats should be seized and retained until our demands are complied with.

*Colonial Office to Foreign Office—(Received October 15).*

No. 126.]

The under secretary of state for the colonies presents his compliments to the under secretary of state for foreign affairs and is directed by the secretary of state to transmit, for the information of the Mar-

quis of Landsdowne, a copy of a dispatch from the acting governor of Trinidad on the subject of the Colombian ship of war *Bolivar*, formerly *Ban Righ*.

DOWNING STREET, *October 14, 1902.*

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[Inclosure.—Extract.]

*Acting Governor Sir C. Knollys to Mr. Chamberlain.*

GOVERNMENT HOUSE, *Trinidad, September 23, 1902.*

I have the honor to report that the Colombian ship of war *Bolivar*, formerly *Ban Righ*, which entered at this port on the 23d March last, and which has formed the subject of much correspondence, having effected such repairs as were absolutely necessary, left for Cartagena on the night of the 19th instant.

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*Memorandum communicated to the German Ambassador.*

No. 127.]

His Majesty's Government have within the last two years had grave cause to complain of unjustifiable interference on the part of the Venezuelan Government with the liberty and property of British subjects.

In three instances the objects of this interference were British trading vessels from the colony of Trinidad, which were pursued by Venezuelan guardacostas on a suspicion of smuggling or trading in arms, and this plea was made the excuse for a violation of British territorial waters, the seizure of the property of British subjects, and in one instance the willful destruction of the vessel.

In two further cases a similar unsupported charge was made the excuse for the seizure and confiscation or destruction of British vessels in Venezuelan waters; while incidents of this nature reached their culminating point, when, on the 30th June last, the British ship *Queen*, while on her voyage from Grenada to Trinidad, was overhauled by a Venezuelan gunboat on the high seas off Carupano, stripped of her sails and deprived of papers, and finally confiscated on a bare suspicion of having carried a cargo of arms to Venezuela, the crew being put on shore and left destitute.

No efforts had been spared by His Majesty's minister at Caracas in each of the earlier cases to obtain an amicable settlement, but in none of them had satisfactory explanations been forthcoming. On the occurrence of the still more flagrant interference with the *Queen*, it was felt that a continuance of such conduct could not be tolerated, and His Majesty's minister at Caracas was instructed on the 8th August to record a formal protest against the action of the Venezuelan Govern-

ment, and to intimate clearly to the President and the minister of foreign affairs that unless explicit assurances were received that such incidents should not recur, and unless full compensation were promptly paid to the injured parties wherever shown to the satisfaction of His Majesty's Government to be justly due, His Majesty's Government would take such steps as might be necessary to exact the reparation which they were entitled to demand in these cases, as well as on account of the claims of the British railway companies, and for any loss arising out of the conduct of the Venezuelan consul at Trinidad.

With reference to the two later points, it may be mentioned that there are several British railway companies in Venezuela which have large claims against the Government in respect of services rendered, damage done to property by Government troops, and in some instances for default of guarantee or loss by depreciation of Government bonds, while with regard to M. Figueredo, the Venezuelan consul at Trinidad, it may be stated that his conduct has given rise to the gravest complaints on the part of the Trinidad Government, both on account of the irregularities in the discharge of his consular functions and his assumption of unwarranted authority by the collection of customs duties for Venezuela within the British colony of Trinidad.

The reply of the Venezuelan Government to the formal protest of His Majesty's minister practically ignores the remonstrances of His Majesty's Government, while it makes no allusion whatever to the threat that they may be compelled to take steps to obtain reparation for the wrongs complained of.

The reply is based on the decision come to by the Venezuelan Government to postpone any reply to all representations on the part of His Majesty's Government from the time of the injuries caused by the *Ban Righ*, so long as the situation created by the dispatch of that vessel from this country continued.

In connection with the already well-known case of the *Ban Righ*, it may be explained that the vessel was detained for some time under surveillance in British waters, and was only allowed to leave the port of London in January last after examination of her papers and cargo, on receipt of an assurance from the Colombian representative at this court that the vessel was intended for the service of his Government, and after ascertaining that no state of war existed between Colombia and Venezuela.

His Majesty's Government had in these circumstances no further ground for detaining the vessel, and the fullest explanations were afforded to the Venezuelan Government on the subject.

In view of the unsatisfactory nature of the Venezuelan reply, His Majesty's Government are compelled to consider what steps may be necessary to enforce their demands, but before proceeding to ulterior measures they propose to intimate their regret at the manner in

which their representations have been received, and to state that they are unable to admit that the serious causes of complaint put forward can be disposed of by a refusal to discuss them, and that if such a refusal is persisted in, it will become their duty to consider what steps they should take in view of such refusal for the protection of British interests. His Majesty's Government are, however, unwilling to exclude at once all possibility of proceeding with negotiations, and they are therefore ready to consider any further communication which the Venezuelan Government may be prepared to make.

As the German Government have expressed their willingness to unite with His Majesty's Government in putting pressure upon Venezuela, they may perhaps think it expedient to associate themselves with His Majesty's Government in this preliminary step, and in such case they may be disposed to instruct their representative at Caracas to inform the Venezuelan Government that the Imperial Government are aware of the communications which have passed between this country and Venezuela, and that the British and German Governments have determined to act together in pressing the claims of their subjects upon the attention of Venezuela.

FOREIGN OFFICE, *October 22, 1902.*

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*Foreign Office to Admiralty.*

[Extracts.]

No. 128.]

FOREIGN OFFICE, *October 22, 1902.*

I am directed by the Marquis of Lansdowne to acknowledge the receipt of your letter of the 10th instant, inclosing copy of a letter from the commander in chief on the North American and West Indies Station relative to the measures which are in his opinion necessary to carry out the proposed naval demonstration off the coast of Venezuela.

The alternative courses suggested by Sir A. Douglas have been carefully considered, and as the establishment of a blockade appears open to some objection, his Lordship is disposed to think that it will be found most convenient, in the event of the Venezuelan Government remaining obdurate, to adopt the suggestion of seizing all the Venezuelan gunboats until the British demands are complied with.

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*Mr. Haggard to the Marquess of Lansdowne—(Received October 23).*

No. 129]

CARACAS, *October 2, 1902.*

MY LORD: On the 1st ultimo I addressed to the Venezuelan Government the note of which I have the honor to inclose a copy, on the



receipt of a dispatch from the British vice-consul at Puerto Cabello, informing me that a British subject named Martin Gransaul had been imprisoned during the previous seven months in the prison called the "Castillo Libertador," in that town, on suspicion of having been mixed up in public politics.

A month having elapsed without my having received any reply to my communication, I think it my duty to bring the matter before your lordship.

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure.]

*Mr. Haggard to Señor Baralt.*

CARACAS, September 1, 1902.

M. LE MINISTRE: The British vice-consul at Puerto Cabello has informed me that a British subject named A. Martin Gransaul has been imprisoned during the last seven months in the Castillo Libertador, in that town.

Mr. Kolster informs me that, having applied for the release of this man, he had been informed that he could only be set at liberty by order of the chief authorities at Caracas.

There does not appear to be, according to Mr. Kolster, any accusation of crime against this man, the only pretext for his imprisonment apparently being a suspicion of his having been mixed up in public politics.

I should be much obliged if your excellency would cause inquiries to be made into this matter and, in the event of Mr. Kolster having been misinformed and of Mr. Gransaul having been duly tried and convicted for some criminal offense, I should be much obliged if you would kindly cause me to be furnished with the data of the legal proceedings taken against him and of his conviction, and informed of the period of time for which he is condemned, and the offense on which he was arraigned.

If, however, there are no such records, and this British subject has actually been suffering this long imprisonment without trial, I would apply to your excellency with confidence to cause the necessary steps to be taken to bring about his immediate release, and to bring to justice the local authorities guilty of this illegal and arbitrary act against a British subject.

I avail, etc.,

W. H. D. HAGGARD.

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*Mr. Haggard to the Marquess of Lansdowne—(Received October 23).*

No. 130.]

CARACAS, October 2, 1902.

MY LORD: I have the honor to inclose a copy of a note which, on the 10th ultimo, I addressed to the Venezuelan Government, on a report from His Majesty's acting consul here, with reference to the cutting and maiming of a British subject named John Jones by the Caracas police. Some days after the receipt of this note the minister for foreign affairs sent me privately, by an official of the foreign office, a letter which he had received from the home department, stating that John Jones had been wounded in a general riot, and that

justice was following its course, or words to that effect. I thereupon called on Dr. Lopez Baralt, thanked him for his communication, and asked him to be good enough to make it official, pointing out at the same time the serious nature of the wounds which John Jones had received, and that nothing could justify such treatment by the civil authorities.

The Venezuelan Government, acting up to their announced intention of refusing to treat officially any complaint put forward by His Majesty's legation, however well justified, have sent no reply to my note.

Mr. Andral tells me that he has seen the man since, and that he is a cripple. He cross-examined him, and he maintains the truth of his sworn statement. Under these circumstances I have thought it my duty to lay this matter before your lordship.

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure.]

*Mr. Haggard to Señor Baralt.*

CARACAS, *September 10, 1902.*

**M. LE MINISTRE:** I regret to have to bring the following circumstances before your excellency:

His Majesty's acting consul having been informed that a British subject named John Jones was in the hospital, Vargas, suffering from severe wounds inflicted on him by a Venezuelan official, proceeded there on the 1st instant, and took his deposition on oath, to the following effect:

That on the 28th ultimo he had a quarrel at the Estado Sarria, and had returned to his dwelling there, when after a while the civil chief, named Mattel, with Felipe Flores and Gregorio Avila, rushed into his room and attacked him with cutlasses, severing one of the fingers of his left hand and wounding him severely on the same arm and one of his legs.

I would venture to call your excellency's special attention to the conduct of the jefe civil in question who attacked this British subject with two accomplices, inflicting upon him, according to the statement of the doctor by whom his wounds were dressed, "numerous cutlass wounds, two of which are of a serious character, and require operation," and would suggest that nothing could justify such brutality on the part of officials, even supposing that the man merited arrest.

I lay these circumstances before your excellency, in the confidence that you will lose no time in causing such steps to be taken as shall in the first place insure this Government official and his two accomplices receiving a fitting punishment for their cruelty and abuse of their position.

I avail, etc.,

W. H. D. HAGGARD.

*The Marquess of Lansdowne to Mr. Haggard.*

[Telegram.]

No. 131.]

FOREIGN OFFICE, *October 25, 1902.*

You should make another representation with respect to the case of John Jones, and state that you have been instructed by His Majesty's Government to urge the Venezuelan Government to see that justice is done.

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*The Marquess of Lansdowne to Mr. Haggard.*

[Telegram.]

No. 132.]

FOREIGN OFFICE, *October 25, 1902.*

You should address the Venezuelan minister for foreign affairs a note stating that the case of Martin Gransaul has been reported to His Majesty's Government, and that they have directed you to ascertain what has been the result of the inquiries which the Venezuelan Government were requested to make. You should add that His Majesty's Government have a right to insist on the prisoner being tried or at once set at liberty.

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*Admiralty to Foreign Office—(Received October 29).*

[Extract.]

No. 133.]

ADMIRALTY, *October 28, 1902.*

With reference to your letter of the 22d instant relative to the measures which, in the opinion of the commander in chief on the North American and West Indies station, are necessary to carry out the proposed naval demonstration off the coast of Venezuela, I am commanded by my lords commissioners of the Admiralty to request you will state to the Marquis of Lansdowne that they do not anticipate any serious difficulty in giving effect to Sir A. Douglas's alternative proposal, viz, to seize all the Venezuelan gunboats until the British demands have been satisfied.

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*The Marquess of Lansdowne to Sir M. Herbert.*

[Telegram.]

No. 134.]

FOREIGN OFFICE, *November 11, 1902.*

I should wish your excellency to obtain an interview with Mr. Hay at an early date, and to make a communication to him in the following terms:

His Majesty's Government have, within the last two years, had

grave cause to complain of unjustifiable interference on the part of the Venezuelan Government with the liberty and property of British subjects. Every effort was made, but without result, to obtain an amicable settlement. In June last a British ship was overhauled on the high seas and eventually confiscated on a bare suspicion of having carried arms to Venezuela.

It was felt that a continuance of such conduct could not be tolerated, and His Majesty's minister at Caracas was instructed to record a formal protest and to intimate clearly to the president and minister for foreign affairs that unless explicit assurances were received that such incidents should not recur, and unless full compensation were promptly paid wherever shown to be justly due, His Majesty's Government would take such steps as might be necessary to exact the reparation which they were entitled to demand in these cases as in others where endeavors to obtain redress had proved of no avail.

The reply was wholly unsatisfactory, and practically ignored the remonstrances of His Majesty's Government.

In view of the nature of this reply, His Majesty's Government are compelled to consider what course it may be necessary to pursue in order to enforce their demands. But before proceeding to ulterior measures they have decided to intimate their regret at the manner in which their representations have been received, and to state that the serious complaints put forward can not be disposed of by a refusal to discuss them. If such a refusal is persisted in it will become their duty to consider what steps they should take for the protection of British interests. They are, however, unwilling to exclude at once all possibility of proceeding with negotiations, and are therefore ready to consider any further communication which the Venezuelan Government may be prepared to make

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*The Marquess of Lansdowne to Mr. Haggard.*

[Telegram.]

No. 135.]

FOREIGN OFFICE, *November 11, 1902.*

Make a communication in the following terms to the Venezuelan Government in the form of a note:

His Majesty's Government regret the unsatisfactory character of the reply to the representations contained in your note of the 30th July. They are unable to admit that the serious causes of complaint put forward can be met by a refusal to discuss them.

If such a refusal is persisted in, it will become the duty of His Majesty's Government to consider what steps they should take for the protection of British interests.

They are, however, unwilling to exclude at once all possibility of proceeding with negotiations, and they are therefore ready to consider any further communication which the Government of the Republic may be prepared to make.

*The Marquess of Lansdowne to Mr. Buchanan.*

[Extract.]

No. 136.]

FOREIGN OFFICE, *November 11, 1902.*

The German ambassador informed me this evening that the German Government were prepared to join with us in addressing a final warning to the Venezuelan Government, and I communicated to him the substance of my telegram to Mr. Haggard of this day's date. I had thought it better not to delay making this intimation, which was, as he would observe, couched in general terms, but I undertook to telegraph at once to Mr. Haggard, desiring him to put himself in communication with his German colleague.

With regard to measures of coercion, the German Government were prepared to accede to our suggestion that the first step should be the seizure of the Venezuelan gunboats, and they proposed that we should instruct our naval authorities in those waters to concert a plan for carrying out this project.

As to the joint execution of measures of coercion, the German Government recognized that there was a sharp distinction between the character of the British and German "first-line" claims; nevertheless, the two claims ought to stand or fall together, and we ought to exclude the possibility of a settlement between Venezuela and one of the two powers without an equal satisfactory settlement in the case of the other. Each Government ought, therefore, to come to an understanding before it embarked upon a project of coercion that neither Government should be at liberty to recede except by mutual agreement; and before common action was initiated we ought to come to a distinct agreement to this effect.

I told Count Metternich that it seemed to me only reasonable that if we agreed to act together in applying coercion, we should also agree that each should support the other's demands and should not desist from doing so except by agreement.

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*Memorandum communicated by Count Metternich, November 13, 1902.*

[Translation.]

No. 137.]

In the first class of claims Germany demands the settlement of her claims arising out of the Venezuelan civil war of 1898-1900, amounting approximately to 1,700,000 bolivars (francs). England, in the first instance, puts forward claims on account of the illegal removal and destruction of English merchant ships.

In the event of the two powers having recourse to coercive meas-

ures, they would both make further demands. Germany would demand the settlement of her claims arising out of the present Venezuelan civil war, amounting at the present time to approximately 3,000,000 bolivars, and also the guaranteeing of the claims of the German creditors, especially those of the Disconto Gesellschaft amounting to approximately 41,000,000 bolivars. England would likewise assert the demands of her subjects, especially the claims of the English railways in Venezuela on account of damage to their lines, and failure to meet deferred liabilities.

These claims of the second class would be combined according to their several natures by the adoption of the joint proposals (recently agreed upon by the Disconto Gesellschaft and the several groups of English creditors interested) for the settlement of the Venezuelan loans of 1881 and 1896. These proposals, which were communicated with the statement of the Disconto Gesellschaft of the 9th October last, were submitted at the same time by the English council of foreign bondholders to the British Government, who promised the council that they should be carefully examined.

The German Government is of opinion that these proposals are just, and may therefore be considered as a suitable basis for a settlement of the Venezuelan external debt.

Among the above-named proposals is contemplated the floating of a new loan, limited to 15,000,000 bolivars, with the same securities as the loans of 1881 and 1896. The object of this loan would be to enable the Venezuelan Government to guarantee a settlement of the foreign claims, especially the German and English ones, the payment of which would otherwise be attended with difficulties.

It is understood that in the event of the joint adoption of the proposals made by the Anglo-German creditors, the British Government will also make itself responsible for as much of the loan of 1881 as is in English hands.

LONDON, *November 13, 1902.*

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*Sir M. Herbert to the Marquess of Lansdowne—(Received November 13).*

[Telegram.]

No. 138.]

WASHINGTON, *November 13, 1902.*

I communicated to Mr. Hay this morning the substance of your lordship's telegram of the 11th instant.

His excellency stated, in reply, that the United States Government, although they regretted that European powers should use force against Central and South American countries, could not object to



their taking steps to obtain redress for injuries suffered by their subjects, provided that no acquisition of territory was contemplated.

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*Colonial Office to Foreign Office—(Received November 17).*

No. 139.]

The undersecretary of state for the colonies presents his compliments to the undersecretary of state for foreign affairs, and is directed by the secretary of state to transmit to him, to be laid before the Marquis of Lansdowne, copy of a dispatch and its inclosure from the acting governor of Trinidad on the subject of the casualty to the British sloop *Racer*, and her subsequent seizure by the Venezuelan authorities at Carupano.

DOWNING STREET, November 15, 1902.

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[Inclosure 1.]

*Acting Governor Knollys to Mr. Chamberlain.*

TRINIDAD, October 9, 1902.

SIR: I have the honor to transmit herewith a copy of the sworn statement of James David relative to the casualty to the British sloop *Racer*, on her voyage from Port of Spain to Mayaro, on the east coast of Trinidad, and her subsequent seizure by the Venezuelan authorities at Carupano. The master also declares that his vessel was boarded by armed men near Carupano and he and his crew robbed of all their belongings.

Copies of Mr. David's statement have been forwarded to the British minister at Caracas and to the governor of the Windward Islands.

I have, etc.,

O. C. KNOLLYS.

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[Inclosure 2.]

*Declaration by James David.*

TRINIDAD AND TOBAGO,

*Town of Port of Spain and the*

*Western District of the County of Saint George:*

I, James David, do solemnly and sincerely declare as follows:

I am the master of the British sloop *Racer*, trading round this colony. I left here in my vessel last Monday, the 22d of last month, bound for Mayaro, and when a couple of miles off the Grand Bocas a squall struck us and dismasted the vessel, and my brother, who was a sailor on board, was struck by the falling mast and was killed on the spot. On Tuesday night (September 23, 1902) I sighted the French steamer *Ville de Tanger* in view of land and hailed her. She lowered a boat, which came alongside the sloop with an officer in charge. He did not come on board, but spoke to us from the boat.

I asked him whether the French captain would tow us up to Port of Spain, but he refused to do so, as he thought the authorities would blame him, and that

he was late, but said he would take the crew on the steamer, but abandon the sloop with the dead body on board. I refused this offer, and the French steamer left us, and we drifted toward the Venezuelan coast. As we got near to the coast, boats from on shore boarded us, with armed men on board, and robbed me and my sailors of all we possessed, including £37, which I had in my trunk, and when we got to Carupano the harbormaster came alongside and asked me what I wanted here. I told him that the sloop was dismasted and had drifted to his port. He then left the sloop and went on board a Venezuelan gunboat, which was then in the harbor. Some time after he returned and told me that I must not land, and he went on shore. An hour afterwards he came off to me again and told me in English, "Come ashore with all your men." I did so, and I was brought with my men to the custom-house and questioned as to how and why I got into Carupano. Eventually men from the customs were sent from on shore, and they seized my sloop. After she was seized I asked the authorities there to send me up to Port of Spain, but they refused to do so. The large French mail steamer was then in Carupano, and we took passage by her and arrived in Port of Spain last Tuesday morning.

I made this declaration, conscientiously believing this to be true and according to the statutory declaration ordinance, 1879, and I am aware that if there is any statement in this declaration which is false, in fact, which I know or believe to be false or do not believe to be true, I am liable to fine or imprisonment.

Subscribed and declared to by the above-named declarant, this 2d day of October, 1902, at the Port of Spain police court, Port of Spain, Trinidad.

JAMES DAVID.

Before me,

J. B. WALKER,

*Stipendiary Justice of the Peace for the Town of Port of Spain and the Western District of the County of St. George, in Trinidad.*

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*The Marquess of Lansdowne to Mr. Buchanan.*

[Extract.]

No. 140.]

FOREIGN OFFICE, November 17, 1902.

The German ambassador being absent from London in attendance upon His Majesty the German Emperor, Count Bernstorff called here to-day at my request, and was informed that His Majesty's Government quite concur in the view that, if joint action against Venezuela is undertaken it should be maintained until the demands of both governments, as finally agreed upon, are satisfied.

In the first place, however, it was necessary to arrive at an understanding with regard to the form in which the British and German claims should be put forward, and also with regard to the manner in which the demands made upon Venezuela should be enforced.

The British claims, as Count Metternich presumed, were capable of classification. Those on account of the recent cases of unjustifiable interference with the liberty and property of British subjects, including the shipping claims, would rank first. Claims for injury to British property during the late revolution, and that which placed

President Castro in power, would come next; and in the third place, the claims of the bondholders.

His Majesty's Government did not, however, desire, in their demands upon Venezuela, to draw a distinction between the various categories. Their object was to obtain a general settlement, and they were of opinion that to advance one class of claims, or at this stage to specify any particular amount, would diminish the chance of securing in all cases the reparation which they considered to be justly due.

If, therefore, the answer of the Venezuelan Government to the communication recently addressed to them should prove unsatisfactory, or if, after a reasonable interval, it should appear that no answer at all would be returned, His Majesty's Government would propose to proceed to measures of coercion and to seize the gunboats.

If the seizure of the gunboats should not produce the desired effect, it would, of course, be necessary to decide what should be the next step. This point would be carefully considered.

On receiving the submission of the Venezuelan Government, and on learning that they were prepared to admit their liability on every count, His Majesty's Government would for their part exact immediate payment of the pressing claims in the first category, according to estimates approved by His Majesty's legation at Caracas, or by the British colonial authorities. They would then consent to the heavier claims being referred to a small mixed commission of three members in case the Venezuelan Government should have any considerations to urge in mitigation of the damages claimed. An arrangement of this nature would be equitable as regards the Venezuelan Government, and would, moreover, prevent pressure being exercised in cases, such as might possibly occur, where the Venezuelan member of the commission could prove a claim to be unfounded or excessive.

Count Bernstorff promised to report these suggestions to his Government at once.

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*The Marquess of Lansdowne to Mr. Buchanan.*

[Extract.]

No. 141.]

FOREIGN OFFICE, *November 17, 1902.*

The council of foreign bondholders and the Disconto Gesellschaft have recently been in communication with regard to the settlement of the external debt of Venezuela and have agreed upon the bases of an arrangement. They have asked for the support of their Governments in pressing their claims upon the Government of Venezuela.

No request for the intervention of His Majesty's Government on behalf of the bondholders was made until September last; their

claim was, therefore, of course, not included among those for which satisfaction was demanded in July. His Majesty's Government are, however, desirous of giving assistance, and believe that the most effective way of doing so will be to support the representations which the German Government intend to make, and to join in urging the Venezuelan Government to accept the proposed arrangement.

Count Bernstorff explained that the last paragraph of the memorandum of the 13th December was intended to clear up a doubt, entertained by the representative of the Disconto Gesellschaft now in London, as to whether His Majesty's Government were prepared to recognize claims arising out of the loan of 1881. He was told that some misunderstanding had occurred. A settlement of the claims connected with this loan formed part of the arrangement, which His Majesty's Government were prepared to support.

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*Mr. Haggard to the Marquess of Lansdowne—(Received November 18).*

[Telegram.]

No. 142.]

CARACAS, November 17, 1902.

In reply to my note sent, in accordance with the instructions contained in your lordship's telegram of the 11th instant, the Venezuelan Government express their regret that it might be inferred that the Venezuelan complaints with regard to the *Ban Righ* and to the attitude taken up by the authorities of the colony of Trinidad had not been examined by His Majesty's Government, as if this had been the case those complaints would not have been attributed to caprice on the part of Venezuela.

Attention is called to the "eagerness of His Majesty's Government or of His Majesty's legation to discuss matters of comparatively secondary importance," when contrasted with the paramount interest felt by Venezuela in obtaining due recognition and respect for her claims, which arise from the grave injuries caused by the *Ban Righ* and the facilities afforded to the revolutionaries by the colonial authorities in Trinidad.

They add that Venezuela has done nothing contrary to courtesy or international law, and that she can not, therefore, justly be held responsible for the present situation.

The Venezuelan Government would be much gratified if His Majesty's Government would express some desire to come to an understanding by which the injuries caused by the *Ban Righ* and by the authorities of Trinidad would be remedied, and they maintain that their claims in connection with those two subjects have hitherto been

met by "the most unfair refusal of His Majesty's Government to consider the matter."

The note continues with a statement that the Venezuelan Government have gravely considered the serious nature of the injuries which have resulted from the treatment of the *Ban Righ* and the action of the Trinidad authorities, and that they ask nothing from Great Britain which is not a legitimate consequence of the situation thereby created. They therefore appeal to the sense of fairness of His Majesty's Government to effect a settlement of the present abnormal and regrettable situation by placing matters on a basis of mutual agreement.

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*Mr. Haggard to the Marquess of Lansdowne—(Received November 20).*

No. 143.]

CARACAS, October 28, 1902.

MY LORD: On the receipt of your lordship's telegram of the 25th October, instructing me to call attention again to the case of John Jones, and to say that His Majesty's Government had instructed me to urge that justice should be done in the matter, I addressed the note to the Venezuelan Government, of which I have the honor to inclose a copy.

From this note your lordship will see that the man was undoubtedly brutally treated, and is consequently a cripple for life.

On the other hand, I have made personal inquiries into the matter, and am inclined to think it possible that Jones may not have been wholly blameless. Nothing, however, would seem to justify his being set upon by a number of police and maimed with cutlasses in the way in which I have described.

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure.]

*Mr. Haggard to Señor Baralt.*

CARACAS, October 27, 1902.

M. LE MINISTRE: Having received no official reply to my note of the 10th ultimo on the subject of the wounds inflicted by the local police on the British subject John Jones, I was compelled to report the matter to His Majesty's Government, and have now received instructions by telegraph from the Marquis of Lansdowne, His Majesty's principal secretary of state for foreign affairs, to call your excellency's attention again to the case and to urge that justice should be done.

I may add that I have myself seen this man, who has lately been discharged from hospital. The description of his maimed condition, which I gave your excellency in my last note, was in no way exaggerated. He is, in fact, a cripple for life and can never do another day's work. Even supposing, therefore, that he had given some provocation to the police, of which I have, as yet, received no

proof, they must greatly and brutally have exceeded their duty in setting upon this man with cutlasses and wounding him in such a terrible manner, and I would suggest that your excellency may think that, in any case, some compensation should be given him for his injuries and to help to support him in his disabled condition.

I avail, etc.,

W. H. D. HAGGARD.

*Mr. Haggard to the Marquess of Lansdowne—(Received November 20).*

No. 144.]

CARACAS, October 28, 1902.

MY LORD: On the receipt of your lordship's telegram of the 25th October, instructing me to ask what had been the result of the inquiries into the case of Martin Gransaul, who had been reported to me by the British vice-consul at Puerto Cabello as having been imprisoned in that town on suspicion of being engaged in politics, and to add to that His Majesty's Government had a right to demand that the accused should be brought to trial or liberated at once, I addressed the note to the Venezuelan Government, of which I have the honor to inclose a copy.

I have, etc.,

W. H. D. HAGGARD.

[Inclosure.]

*Mr. Haggard to Señor Baralt.*

CARACAS, October 27, 1902.

M. LE MINISTRE: Having received no reply to my note to your excellency of the 1st September, in which I requested you to be good enough to cause inquiries to be made into the case of a British subject named Martin Gransaul, who was reported to have been imprisoned during the previous seven months in the Castillo Libertador at Puerto Cabello on suspicion of his having been mixed up in politics, I was compelled to bring the matter before His Majesty's Government, which I did on the 2d instant.

I have now been instructed by telegraph by the Marquis of Lansdowne, His Majesty's principal secretary of state for foreign affairs, to ask your excellency to inform me of the result of those inquiries.

I am to add that His Majesty's Government have a right to demand that this accused British subject should either be brought to trial or else immediately liberated.

I avail, etc.,

W. H. D. HAGGARD.

*Mr. Haggard to the Marquess of Lansdowne—(Received November 20).*

No. 145.]

CARACAS, October 28, 1902.

MY LORD: I have the honor to inclose a copy of a note which I addressed on the 13th instant to the Venezuelan Government protest-



ing against the impressment into the army of a British subject, named John Alexander Sampty.

These cases are unfortunately too frequent, but, as it may happen sometimes they are the result of mistaken identity, I do not, as a rule, if the men are released at once, through my intervention or otherwise, treat the matter officially.

In this case, however, there was no such excuse. The man had his certificate of nationality on him when impressed, and showed it ineffectually. He was, however, threatened with death if he refused to march with the other soldiers. I therefore considered it my duty to address a protest to the Venezuelan Government on this subject, in the hopes that the result might be that some action would be taken to warn the press gangs to be careful not to impress British subjects.

Here in the capital a pressed man can generally succeed in communicating with me or with His Majesty's consul before being marched off, but in the country districts he has no such chance, and, doubtless, many a colored British subject has thus lost his life or been crippled in the constant civil wars which devastate this country.

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure.]

*Mr. Haggard to Señor Baralt.*

CARACAS, October 13, 1902.

**M. LE MINISTRE:** I have the honor to lay the following circumstances before your excellency:

John Alexander Sampty, who holds a certificate of British nationality, issued by His Majesty's consulate on the 12th March, 1898, was seized last week and forcibly recruited for the Venezuelan army, notwithstanding his showing his certificate of nationality to an officer named Delfino Olivo.

On his protesting against this outrage, he was threatened with death if he did not march with the other soldiers. He therefore, to save his life, did so. He was illtreated on the march, but subsequently released, and on Saturday, the 11th instant, presented himself at His Majesty's consulate. The acting consul accompanied him to lay his complaint before the minister of war, who stated that the matter must be referred to him through the department of foreign affairs.

I therefore report the circumstances to your excellency officially, and protest against the recruiting of an English subject as contrary, not only to international law, but to the special terms of the treaty between England and Colombia of 1825.

I would further remind your excellency that on various occasions the Venezuelan Government communicated to His Majesty's legation their protest against foreign subjects engaging in the internal strifes of the Republic. It would therefore not be necessary for me to give any other grounds than this for the protest which I hereby make, and, at the same time, for the request not only that this officer, Delfino Olivo, should be punished for acting in a manner

at once contrary to law and to the wishes of the Venezuelan Government, but that such measures should be taken as shall render a repetition of such misconduct impossible in the future.

I avail, etc.,

W. H. D. HAGGARD.

*Mr. Haggard to the Marquess of Lansdowne—(Received November 20).*

No. 146.]

CARACAS, October 29, 1902.

MY LORD: The acting governor of Trinidad forwarded me by last mail a sworn declaration made by the captain of the British sloop *Racer*, relating to circumstances which occurred to his boat on her voyage from Port of Spain to Mayaro, on the east coast of Trinidad, its boarding off the Venezuelan coast by armed men, and the robbery by these of all his belongings and those of his crew, and its subsequent seizure by the Venezuelan authorities at Carupano.

Sir Courtenay Knollys informed me that he had transmitted this statement to the secretary of state for the colonies, so I will not trouble your lordship with a copy of it.

I have the honor to inclose a copy of a note which, on its receipt, I addressed to the minister for foreign affairs.

I have, etc.,

W. H. D. HAGGARD.

[Inclosure.]

*Mr. Haggard to Señor Baralt.*

CARACAS, October 23, 1902.

M. LE MINISTRE: I have the honor to bring before your excellency the following circumstances related in a solemn declaration made by a British subject named James David on the 2d of this month at Port of Spain before the stipendiary justice of the peace for the district, which has been forwarded to me by his excellency the acting governor of Trinidad.

James David declares that he was the master of the British sloop *Racer*, trading with Trinidad. On Monday, the 22d September, he left Port of Spain with his vessel, bound for Mayaro, and, when a couple of miles off the Grand Bocas, a squall struck the ship and dismasted it, his brother, who was a sailor on board, being killed by the falling mast. The boat then drifted toward the Venezuelan coast. As it got near to the coast, boats from on shore boarded it with armed men and robbed him and his sailors of all they possessed, including £37 which he had in his trunk, and, when they got to Carupano, the harbor master went alongside and asked him what he wanted there. David told him that the sloop was dismasted and had drifted to his port. The harbor master then left the sloop and went on board a Venezuelan gunboat which was then in the harbor; some time after, he returned, telling David that he must not land, and he then went on shore. An hour afterwards he came off again and told

David in English, "Come ashore with all your men." The master of the *Racer* did so and was brought with his men to the custom-house and questioned as to how, and why he came to Carupano. Eventually men from the customs were sent from on shore and they seized the sloop.

This narrative would have appeared incredible had it not unfortunately happened that the circumstances which it relates, of violence toward British subjects and property are of a nature with which His Majesty's legation has been only too familiar of late; but the facts connected with this incident would seem, if not disproved, to be, if possible, even more grave than those of the cases which formed the subject of the note which, by instruction of His Majesty's Government, I addressed to your excellency on the 30th July.

This British ship drifts into a Venezuelan harbor in a disabled condition. It is usual on such unfortunate occasions for the local authorities of a port to give what kindly and hospitable assistance they can to a disabled foreign vessel, but the treatment which is reported as having been accorded at Carupano to the *Racer* is worse than that formerly given by "wreckers" in savage districts to any disabled ship unhappily driven on their shores, for they only used to plunder the crew and ship, whereas at Carupano, according to Captain David, not only has that been done, but the authorities have seized the ship itself.

I can only sincerely hope that your excellency will be in a position to disprove this declaration. In the meanwhile, Sir Courtenay Knollys informs me that he is seeking further evidence on the question, which will in due course be communicated to me, and that he has forwarded a copy of Mr. David's statement to His Majesty's secretary of state for the colonies.

When this further evidence arrives I shall have the honor of communicating it to your excellency.

I avail, etc.,

W. H. D. HAGGARD.

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*The Marquess of Lansdowne to Mr. Haggard.*

[Extract.]

No. 147.]

FOREIGN OFFICE, *November 21, 1902.*

Communications have recently passed between the colonial office and this department with reference to the alleged removal of arms and ammunition from the *Ban Righ*.

In view of the fact that no state of war in the legal sense exists in Venezuela, and that in time of peace the trade in arms and ammunition falls within the range of legitimate commerce, I have to state that there is no ground on which His Majesty's Government could refuse to allow the ammunition to be withdrawn from the bonded store.

By domestic legislation the Venezuelan Government may regulate the importation of arms and ammunition into their own territories in time of peace, and private individuals who break the laws of Venezuela must be prepared to suffer the consequences. If, however, any such legislation exists, it can not impose upon His Majesty's Government any obligation to limit the trading facilities which all foreigners in Trinidad equally enjoy.

*The Marquess of Lansdowne to Sir M. Herbert.*

[Telegram.]

No. 148.]

FOREIGN OFFICE, *November 25, 1902.*

Ask Secretary of State whether, if it becomes necessary to withdraw His Majesty's minister from Caracas, which may happen at any moment, the United States minister will be allowed to take charge of British interests.

*The Marquess of Lansdowne to Mr. Haggard.*

No. 149.]

FOREIGN OFFICE, *November 25, 1902.*

SIR: I have received your dispatch of the 29th ultimo relative to the boarding of the British sloop *Racer*, and robbery of the master and crew when that vessel was in distress off the Venezuelan coast, and her subsequent seizure by the Venezuelan authorities at Carupano.

I approve your action in having addressed a remonstrance to the Venezuelan Government on the subject.

I am, etc.,

LANDSDOWNE.

*The Marquess of Lansdowne to Mr. Haggard.*

No. 150.]

FOREIGN OFFICE, *November 25, 1902.*

SIR: I have received your dispatch of the 28th ultimo relative to the impressment into the Venezuelan army of a British subject, named John Alexander Sampty.

I approve your having addressed a note to the Venezuelan Government, remonstrating against such impressment as a breach of our treaty rights under Article IX of the treaty between this country and Colombia of 1825.

I am, etc.,

LANDSDOWNE.

*Admiralty to Foreign Office—(Received November 26).*

No. 151.]

ADMIRALTY, *November 25, 1902.*

SIR: Referring to your semiofficial communication of to-day's date, I am commanded by my lords commissioners of the Admiralty to request you will inform the Marquis of Lansdowne that the following telegram has been dispatched to the commander in chief on the North American Station:

In concert with German Government, His Majesty's Government have decided to enforce claims by seizure of all Venezuelan gunboats. Telegraph when you are ready to commence operations. Further instructions with regard to communicating with the German senior naval officer will be sent to you.

I am, etc.

C. I. THOMAS, *pro Sec.*

*Sir M. Herbert to the Marquess of Lansdowne—(Received November 26).*

[Telegram.]

No. 152.]

WASHINGTON, November 26, 1902.

Charge of British interests in Venezuela. Mr. Hay has informed me that in the event of the withdrawal of His Majesty's minister at Caracas, he will be pleased to allow the United States representative to take charge of British interests in Venezuela, provided that no objection to this arrangement is raised by the Venezuelan Government.

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*The Marquess of Lansdowne to Mr. Buchanan.*

[Extract.]

No. 153.]

FOREIGN OFFICE, November 26, 1902.

The German ambassador called upon me on the 21st instant and stated that he had received further instructions from his Government with regard to the action which they were prepared to take in Venezuela. The following is the substance of the communication which his excellency made to me:

The Imperial Government are prepared generally to accept the counter proposals of His Majesty's Government respecting joint action against Venezuela, but they desire on certain points to offer the following observations:

1. The Imperial Government are willing to intervene jointly in support of the collective German and English claims, without discriminating between the various classes of claims, it being understood that joint action will be maintained unless terminated by mutual agreement.

In consequence, the Imperial Government will at once put forward the following demands:

(a) Payment of the German claims arising out of the civil wars of the years 1898–1900, amounting to about 1,700,000 bolivars.

(b) Settlement of claims arising out of the present civil war in Venezuela.

(c) Guarantee for the claims of German firms on account of the building of the slaughterhouse in Caracas, amounting to a round sum of 800,000 bolivars.

(d) Guarantee for the payment of the claims of the German Great Venezuela Railway Company for interest and sinking fund of the Venezuelan loan of 1896.

The Imperial Government also concur in the further proposal of His Majesty's Government to demand at once from the Venezuelan Government the acceptance in principle of all the German and

English claims, and to reserve the separate settlement of claims for a mixed commission to be appointed later. The Imperial Government, however, attach importance to the following point, viz, that the German war claims, under paragraph (a), which have already been thoroughly investigated, and have been presented to the Venezuelan Government for the amounts declared, shall not be subjected to fresh examination at the hands of this commission.

2. The Imperial Government agree that the measures of coercion against Venezuela shall be undertaken as soon as possible. It must, however, be taken into consideration that the last notes between the German and Venezuelan Governments were exchanged more than six months ago, and were not couched in a tone which would justify an immediate resort to measures of coercion. The Imperial Government, therefore, consider that they should make one last representation to the Venezuelan Government, and therefore propose that Germany and Great Britain should each simultaneously present an ultimatum, in which each power should embody its own collective demands, referring at the same time to the demands of the other power. The Imperial Government do not consider that this course would result in a postponement of active measures, as the communications might be presented at once, a period of twenty-four hours being granted for compliance.

3. As regards the coercive measures to be adopted, the Imperial Government are prepared, first, in conjunction with Great Britain, to proceed to the seizure of the Venezuelan ships of war.

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*The Marquess of Lansdowne to Mr. Buchanan.*

[Extract.]

No. 154.]

FOREIGN OFFICE, *November 26, 1902.*

I had a lengthy conversation to-day with the German ambassador on the subject of the Venezuelan question.

I told his excellency that, if I correctly understood the views of the German Government, the points as to which we had not arrived at an agreement were few in number, and not of first-rate importance.

They were, I believe, as follows:

1. We did not like the German proposal to inform the Venezuelans that we shall require an answer to our ultimatum within twenty-four hours. We had no objection to lay down this limit of time for our own guidance, but we thought it might be inconvenient to notify it to the Venezuelans in case by any chance we should, at the last moment, find it impossible to take action at the appointed moment.

2. The German Government had suggested that the representatives of the two powers should, after our demands had been refused, leave



Caracs and go either to La Guaira or on board a ship of war. We thought it better that they should be authorized to leave Caracas as soon as the ultimatum had been presented, but it might be left to their discretion to decide when they should leave and where they should go.

3. We observed that the German Government proposed to claim an immediate payment of 1,700,000 bolivars, equal to £66,275, in satisfaction of their "first rank" claims. Our first rank claims would probably not exceed £10,000, and we thought it only fair that the cash payment to be made to each Government by the Venezuelan Government should be of the same amount. We should, therefore, ask for the same sum as that demanded by the German Government, as a payment on account toward the satisfaction of the total of our claims, which would reach a very large sum.

Besides these three points, there was the question of the measures of coercion which might be resorted to in the event of the seizure of the Venezuelan gunboats proving ineffectual.

I thought, however, that if points 1, 2, and 3 could be satisfactorily disposed of, we might, without waiting for a settlement of this further question, take the steps which were necessary with a view to the presentation of the ultimatum and the preparation of the coercive measures which would be necessary if it was disregarded by the Venezuelan Government.

His excellency agreed with me as to this, but thought we must be prepared to resort to some further measures of coercion in the event of the seizure of the gunboats proving insufficient.

In this I concurred, telling his excellency that His Majesty's Government fully recognized that such ulterior measures might be inevitable, and that we should have to come to an agreement for their adoption in one form or another.

We then had some discussion as to the sequence in which the different steps which would be necessary might be taken by the two Governments, and I promised his excellency that I would send him a short note describing those steps in chronological order. I subsequently sent him the memorandum of which a copy is attached to this dispatch.

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[Inclosure.]

*Memorandum.*

The senior naval officers should be instructed to confer together and to settle their plan of operations for seizing the gunboats. They should also be instructed to have a ship or ships in readiness at La Guaira to take on board, if necessary, the British and German representatives.

2. Mr. Haggard and Baron Pilgrim should be instructed to present the ultimatum. It should be left to their discretion to decide when they should leave

Caracas, and whether they should remain at La Guaira or go on board man of war there. It might, however, without tying them down to any particular course, be suggested that they should wait twenty-four hours in Caracas after the presentation of the ultimatum. They should announce their departure by notes to the minister for foreign affairs, and to state that British and German interests were left in charge of ———.

They might then wait another twenty-four hours at La Guaira or on board the vessel.

3. If, at the expiration of the forty-eight hours, no satisfactory answer should have been received, the representatives should so inform the senior naval officers.

The latter should be instructed, on receiving this intimation from the representatives, to proceed at once to the seizure of the gunboats.

FOREIGN OFFICE, November 26, 1902.

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*Admiralty to Foreign Office—(Received November 27).*

No. 155.]

ADMIRALTY, November 27, 1902.

SIR: With reference to previous correspondence, I am commanded by my lords commissioners of the Admiralty to transmit, for the information of the secretary of state for foreign affairs, a copy of a telegram dated the 27th November, from the naval commander in chief on the North American Station, relative to the situation in Venezuela, together with a copy of Admiralty reply.

I am, etc.,

EVAN MACGREGOR.

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[Inclosure 1.—Telegram.]

*Commander in chief, North American Station, to Admiralty.*

BERMUDA, November 27, 1902.

His Majesty's ship *Charybdis* will be ready to leave Bermuda 2d December. I have placed the *Indefatigable*, *Fantome*, and *Alert* under the orders of Commodore Montgomerie.

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[Inclosure 2.—Telegram.]

*Admiralty to Commander in chief, North American Station.*

ADMIRALTY, November 27, 1902.

Your proposals are generally approved.

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*The Marquess of Lansdowne to Sir M. Herbert.*

[Telegram.]

No. 156.]

FOREIGN OFFICE, November 27, 1902.

Please express to Mr. Hay the best thanks of His Majesty's Government for promise reported in your telegram of yesterday.

His Majesty's Government have not yet quite decided as to the course of action to be adopted: but, with regard to the last sentence of your telegram, they would be grateful if instructions could be sent by telegraph to the United States minister at Caracas authorizing him to take over charge of British interests when His Majesty's minister makes an application to that effect.

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*The Marquess of Lansdowne to Mr. Haggard.*

[Telegram.]

No. 157.]

FOREIGN OFFICE, November 27, 1902.

We shall proceed, in conjunction with the Germans, as follows, subject to alterations in matters of detail:

Instructions will shortly be sent you to present to the Venezuelan Government further communication in the form of an ultimatum. If, within a limited period, which will be indicated, you have not received from them a satisfactory reply, you will quit Caracas, and either proceed to La Guaira or go on board one of His Majesty's ships which will be at that port.

Should no answer be received after another short interval, you will inform the senior naval officer of the fact, and he will have received orders to proceed at once to the seizure of Venezuelan gun-boats upon hearing from you.

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No. 158.]

*Memorandum communicated by M. Cambon, November 28, 1902.*

L'ambassadeur de France a fait connaître à son gouvernement les intentions que lui a manifestées mercredi dernier, 26 novembre, Lord Lansdowne relativement aux affaires du Vénézuéla.

Le gouvernement britannique paraît disposé à recourir à une action navale; dans le cas où celle-ci devrait aboutir à une main-mise sur les douanes vénézuéliennes, le gouvernement de la République aurait des réserves à formuler.

En effet, aux termes du traité franco-vénézuélien du 26 novembre 1885 (De Clerc, Tome XV, supplément, p. 903), article 2:

La somme de 498,970 fra. 92 c., à laquelle s'adjoindra ultérieurement le montant des indemnités allouées par la commission mixte instituée par la présente convention, sera couverte au moyen de la quote-part proportionnelle attribuée mensuellement à la France dans la répartition du 18 pour cent des quarante unités douanières affectées par le Vénézuéla aux créances diplomatiques. Cette quote-part mensuelle ne pourra être inférieure au chiffre de . . . etc.

En outre, de nouvelles indemnités doivent être payées au gouvernement français au moyen de la même dette diplomatique d'après un arrangement signé à Paris le 19 février 1902.

Il résulte de ces conventions qu'une main-mise sur les ressources de la douane Vénézuélienne porterait préjudice aux intérêts français.

L'ambassadeur de France signale cette situation à l'attention de sa seigneurie le secrétaire d'état pour les affaires étrangères.

AMBASSADE DE FRANCE À LONDRES.

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[Translation.]

The French ambassador has informed his Government of the intentions of Lord Lansdowne in regard to Venezuela, which were communicated to him on Wednesday last the 26th November.

The British Government appear to be disposed to have recourse to a naval action; should such action lead to the seizure of the Venezuelan customs, the government of the Republic would have to make certain reservations.

Thus, in the Franco-Venezuelan treaty of the 26th November, 1885 (De Clerc, vol. xv, supplement, p. 903), Article II runs:

The sum of 493,970.92 francs, to which will subsequently be added the amount of the indemnities allotted by the mixed commission instituted under this convention, will be met by the proportion accorded monthly to France out of the 13 per cent of the forty unties of the customs assigned by Venezuela to the diplomatic debt. This monthly quota shall not be less than ———, etc.

Besides this, there are fresh indemnities to be paid to the French Government out of this same diplomatic debt, in accordance with an arrangement signed at Paris on the 19th February, 1902.

The effect of these conventions is that a seizure of the resources of the Venezuelan customs would prejudice French interests.

The French ambassador brings this position to the notice of the secretary of state for foreign affairs.

FRENCH EMBASSY, *London*.

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*Foreign Office to Admiralty.*

No. 159.]

FOREIGN OFFICE, *November 28, 1902.*

SIR: I am directed by the Marquis of Lansdowne to acknowledge the receipt of your letter of yesterday's date, inclosing copy of a telegram from the commander in chief North American Station, relative to the operations which is proposed to undertake in Venezuelan waters, together with a copy of the Admiralty reply.

Lord Lansdowne understands that, as His Majesty's ship *Charybdis*

will not be ready to start from Bermuda until the 2d December, she can not arrive at Trinidad until the 6th December. As she is commanded by Commodore Montgomerie, to whom the admiral has intrusted the conduct of operations, no action can be taken until after her arrival.

I am, however, to suggest, for the consideration of the lords commissioners of the Admiralty, that a telegram should be addressed to the admiral, inquiring where His Majesty's ships *Indefatigable*, *Alert*, and *Fantome* are at present, and instructing him that these three ships should be ready at Trinidad by the time the *Charybdis* arrives.

I am further to state that, in Lord Lansdowne's opinion, the admiral may now be instructed by telegraph to confer with the German senior naval officer as to the plan of operations to be adopted for the seizure of the Venezuelan gunboats.

It would also be necessary that he should arrange for one of His Majesty's ships to be in readiness to proceed, at once if necessary, to La Guayra to take on board His Majesty's minister. Should their lordships see no objection, the commanding officer of the vessel detached for this duty might offer hospitality to the German chargé d'affaires.

Lord Lansdowne considers that it may be useful for the admiral to know the course of procedure which, subject to alteration in matters of detail, His Majesty's Government, in conjunction with the German Government, propose to take in Venezuela. I am therefore to inform you that His Majesty's minister at Caracas will shortly be instructed to present a final communication to the Venezuelan Government in the form of an ultimatum. If a satisfactory answer is not received within a limited period, the duration of which will be subsequently indicated, Mr. Haggard will leave Caracas and will have discretion to remain at La Guayra or to proceed on board one of His Majesty's ships. If, after another short interval, no reply is forthcoming, Mr. Haggard will notify this to the senior British naval officer, who will then, if the lords commissioners shall have given him the requisite orders, proceed at once to the seizure of the gunboats.

Should His Majesty's legation be withdrawn from Caracas, it is probable that British interests in Venezuela will be placed in charge of the United States minister.

I am, etc.,

F. H. VILLIERS.

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*The Marquess of Lansdowne to Mr. Buchanan.*

[Extract.]

No. 160.]

FOREIGN OFFICE, *December 1, 1902.*

I communicated to the German ambassador this afternoon a copy of the instructions which will be sent to-morrow to His Majesty's

minister at Caracas with regard to the presentation of an ultimatum to the Venezuelan Government, and the action which will subsequently be taken if no satisfactory reply is received. I told Count Metternich that Mr. Haggard had already been informed generally of the course which it was intended to adopt, but that I had postponed giving him precise instructions until His Majesty's Government and the German Government had settled every point of detail. Now that a complete agreement has been arrived at, there was no reason for further delay. The commander in chief on the North American Station had been directed to confer with the German senior naval officer and to concert a plan of operations for the seizure of the Venezuelan gunboats. The British squadron would be assembled at Port of Spain on the 6th instant, and one of His Majesty's ships would arrive on that day at La Guayra and remain there in readiness to take off His Majesty's minister.

Of course, if desired, accommodation would also be offered to the German chargé d'affaires.

With regard to the question of the ulterior measures to be taken if the seizure of the gunboats should fail in effect, I hoped to be very shortly in a position to explain the views of His Majesty's Government.

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*The Marquess of Lansdowne to Mr. Haggard.*

[Telegram.]

No. 161.]

FOREIGN OFFICE, *December 2, 1902.*

Your telegram of the 17th ultimo.

In answer to the Venezuelan note, you should address a written communication to the Venezuelan minister for foreign affairs, pointing out that, with regard to the *Ban Righ*, His Majesty's Government have given full explanations, and have shown that on this account there is no legitimate ground of complaint. Nor do they consider that there is any justification for attributing blame to the authorities at Trinidad, who only acted in accordance with instructions.

You should then state that His Majesty's Government also regret the situation which has arisen, but that they can not accept the note as in any degree a sufficient answer to your communications, or as indicating an intention on the part of the Venezuelan Government to meet the claims which His Majesty's Government have put forward, and which must be understood to include all well-founded claims which have arisen in consequence of the late civil war and previous civil wars, and of the maltreatment or false imprisonment of British subjects, and also a settlement of the external debt.

You will request the Venezuelan Government to make a declaration that they recognize in principle the justice of these claims; that



they will at once pay compensation in the shipping cases, and in the cases where British subjects have been falsely imprisoned or maltreated, and that as to other claims they will be prepared to accept the decisions of a mixed commission with regard to the amount and the security for payment to be given.

You should express a hope that the Venezuelan Government will comply with these demands and not compel His Majesty's Government to take steps to obtain satisfaction. You should add that his Majesty's Government have been informed of the claims of the German Government against Venezuela, that the two Governments have agreed to act together in order to obtain a settlement of all their claims, and that His Majesty's Government will require the immediate payment of a sum equal to that which may in the first instance be paid to the German Government. Any balance after the discharge of pressing claims will be held on account for the liquidation of the claims which will go before the commission.

You should make it quite clear that this communication must be regarded in the light of an ultimatum.

You will confer with your German colleague and act in close conjunction with him. Subject to any modifications which, after conferring with him, you may consider necessary, you should proceed as follows: The presentation of notes must be simultaneous, and should take place on the 7th instant. If no satisfactory answer is received in the course of twenty-four hours, you and your colleague should leave Caracas for La Guaira. On leaving you should send a note to the minister for foreign affairs announcing your departure, and stating that British interests have been placed in charge of the United States minister. You should await answer at La Guaira for another twenty-four hours, and if none arrives you should intimate this to the senior naval officer at Port of Spain, who will have received instructions on hearing from you to proceed to active measures. One of His Majesty's ships will be at La Guaira on the 6th instant, and it is left to your discretion whether you go on board at once on arrival there or wait until after the second interval of twenty-four hours has elapsed. If convenient, accommodation on board His Majesty's ship can, of course, be offered to the German chargé d'affaires.

*Sir R. Rodd to the Marquess of Lansdowne—(Received December 9).*

[Telegram.]

No. 162.]

ROME, December 3, 1902.

This afternoon the minister for foreign affairs spoke to me on the subject of Venezuela. He said that he had gathered that a strong representation was about to be made to that Government by His Majesty's Government, and that coercion might have to be resorted to.

As the Venezuelan Government had also given Italy just cause for complaint, he had taken steps to inform the United States Government that Italy might find it necessary to take coercive measures, and had received a very satisfactory reply. Although the Italian Government were not disposed to take the initiative in such action, he would, for many reasons, gladly join in any steps taken by His Majesty's Government if your lordship were likely to view such a proposal favorably. In reply to his request for my personal opinion on this point, I told him that, speaking personally, such a suggestion might not, I thought, find your lordship altogether unprepared. I added that as I understood that His Majesty's Government and the German Government were acting in accord, no time should be lost if he contemplated proposing to join in any steps taken by them.

Signor Prinetti then said that he would send instructions to the Italian ambassador in London. His excellency added that an Italian man-of-war was now in Venezuelan waters, and that telegraphic instructions to proceed south immediately could be sent to a second, which was now in North American waters.

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*Mr. Haggard to the Marquess of Lansdowne—(Received December 4).*

No. 163.]

CARACAS, November 15, 1902.

MY LORD: I did not forward to the Venezuelan Government, in my note of the 22d February last, a copy of which I had the honor of transmitting to your lordship in my dispatch of the 22d of that month, together with the other claims, of which a list was inclosed, that of James Nathan Kelly, which was brought to your lordship's notice by Mr. Grant Duff in his dispatch of the 22d March, 1901.

My reason for not doing this was that the claim did not come under the decree of the 24th January, 1901, with reference to the claims commission. Mr. Grant Duff, indeed, in his dispatch of the 22d March, mentions that the outrage took place in the month of January, and was the first committed against a British subject which had occurred in connection with the then recent disturbances in the eastern states of Venezuela—a movement totally different from those connected with the access to power of General Castro, to which that decree applied.

In reply to Mr. Grant Duff's note of the 12th March, 1901, representing the case to the Venezuelan Government, which he forwarded to your lordship, the minister for foreign affairs sent me a note inclosing a number of statements of soldiers and other apparent partisans of the Government, to the effect that Mr. Kelly was not brought before a court-martial, and, though it was acknowledged that his

house was pillaged, it was denied that this was to the extent claimed by Mr. Kelly, while this pillage was justified by the allegation, as declared, that his boat, when captured, had nine sacks of cocoa on board which was intended to be smuggled over to Trinidad, and, moreover, that he had taken part in the previous revolution of General Hernandez.

It would not seem that, even supposing that these accusations had any foundation in fact, they afforded due justification for their plundering of his property, which was at least inferentially put forward.

Kelly forwarded to me, in reply to this last accusation, three affidavits, one of them from the local revolutionary chief, to the effect that he had never taken any part in any revolution.

It would seem that Kelly's claim might now be presented, together with the others, and I should be glad to be favored with your lordship's instructions on this point; but I would venture to submit that it is impossible for anyone to give an opinion as to the value of the amount of the loss, which, according to his estimate amounts to \$3,640, an amount which is denied by the Government witnesses, though, as I have before stated, they actually do admit, and attempt to justify, the pillage of the house.

I have the honor to inclose, for the sake of reference, a brief memorandum which I wrote with the intention of sending to the Venezuelan Government, but ultimately decided to suspend.

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure.]

*Memorandum.*

In the month of January, 1901, as reported to His Majesty's legation, Rio Grande was occupied by troops of the Venezuelan Government, where a British subject, James Nathan Kelly, a native of the island of Trinidad, lived on an estate which he had purchased, on which he cultivated coffee and cocoa on a large scale.

An officer arrested Mr. Kelly and dragged him before a court-martial. In the meanwhile his house was broken open and pillaged. Goods to the value of \$300, furniture worth \$300, cocoa worth \$1,040, \$1,500 in cash, and a cutter valued at \$500 were taken away by the soldiers. Mr. Kelly's wife took refuge in the woods near Rio Grande, and, making her way to Guiria, eventually reached Port of Spain in great distress.

Since that time Mr. Kelly's house and land were subjected to further depredations on the part of the Government troops.

Mr. Kelly has never taken part in political affairs in Venezuela, as is proved by three declarations, signed by Pedro Ducharme, Antonio M. Gonzalez G., and Juan Solis, respectively, and duly authenticated by the Venezuelan consulate in Port of Spain.

W. H. D. HAGGARD.

BRITISH LEGATION, Caracas, February 20, 1902.

*Mr. Haggard to the Marquess of Lansdowne—(Received December 4).*

[Extract.]

No. 164.]

CARACAS, November 17, 1902.

I have the honor to inclose a copy of the note which, in accordance with the instructions conveyed in your lordship's telegram of the 11th instant, I addressed to the Venezuelan Government on the subject of their refusal to discuss the serious causes of complaint represented to them in my note of the 30th July last.

The reply arrived last night, and I have the honor to inclose a translation of it herewith. I sent a précis of it to your lordship this morning by telegraph, but it was impossible in a telegram to convey the tone of this communication, which is, moreover, perhaps stronger in the original Spanish than in the translation. Putting that aside, it amounts to this: Great Britain has no grievances against Venezuela. Venezuela has suffered great wrongs at the hands of Great Britain. No less than four times in as many pages are the injuries caused by the *Ban Righ* and by the authorities of Trinidad brought forward. His Majesty's Government are accused of not having carefully considered the complaints as to these wrongs, to which is now added the heinous offense of having allowed five months' accumulated correspondence to be taken by the German cruiser *Panther* to Ciudad Bolivar, a port the blockade of which we had refused to recognize, as also the fact that I have allowed one of their notes to remain unanswered, a course which I followed, because it was of such a nature that I considered it advisable to refer it to your lordship before doing so. In the same way that the Venezuelan Government consider that the various outrages detailed in my note of the 30th July are trivial and not worthy of consideration, while their really unfounded complaints about the *Ban Righ* and the conduct of the authorities of Trinidad are alone worthy of mention; so also it is a grievous offense for me not to have answered one note of theirs while they are acting perfectly correctly in leaving forty-three from this legation unanswered. According to them, this is not contrary to any "formula of courtesy," but for me not to have replied to one is a very different matter.

I would venture also to call your lordship's attention to the statement that the Venezuelan Government would be extremely pleased "to receive from His Majesty's Government some indication of their desire for the establishment of a mutual understanding to remedy the injuries caused by the steamship *Ban Righ* and the subsequent conduct of the authorities of Trinidad," whereas "up to the present all that has been evident has been the most unfair refusal to consider the matter."

It is not too much to say, from a perusal of this note, that if the Venezuelan Government are willing to admit the possibility suggested by your lordship of proceeding with any negotiations, the only basis which they would accept would be that of indemnification by His Majesty's Government for the supposed injuries done to them by the *Ban Righ* and by the equally fictitious active hostility of the authorities of Trinidad.

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[Inclosure 1.]

*Mr. Haggard to Señor Baralt.*

No. 164.]

CARACAS, November 11, 1902.

**M. LE MINISTRE:** I am instructed by His Majesty's Government to inform you that of the Republic of Venezuela that they regret the unsatisfactory character of the reply to the representations contained in my note to your excellency of the 30th July last. They are unable to admit that the serious causes of complaint put forward can be met by a refusal to discuss them.

If such a refusal is persisted in it will become the duty of His Majesty's Government to consider what steps they should take for the protection of British interests.

They are, however, unwilling to exclude at once all possibility of proceeding with negotiations, and they are therefore ready to consider any further communication which the Government of the Republic may be prepared to make.

I avail, etc.,

W. H. D. HAGGARD.

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[Inclosure 2.—Translation.]

*Señor Baralt to Mr. Haggard.*

CARACAS, November 14, 1902.

**M. LE MINISTRE:** Your excellency's note of the 11th instant might well lead the Government of the Republic to infer, to its great regret, that His Majesty's Government had not, as yet, carefully considered the series of complaints and representations submitted to His Majesty's legation in respect of the acts perpetrated by the *Ban Righ* since that vessel's departure from British ports, and in consequence of the attitude taken up by the authorities of Trinidad since the beginning of the revolution, which was fostered within the territory of the colony in question, and which has lately caused such grievous ravages in Venezuela.

If His Majesty's Government had examined these charges, of which a complete résumé up to the 5th April last was given in my note of that date, and to which, among others, there has just been added that of the dispatch of many bags of correspondence to Ciudad Bolívar, a place in the possession of a rebellion against the lawful Government of the Republic, it would not ascribe the postponement of all other matters to the mere caprice of Venezuela, and it would see, on the contrary, in that action, the logical result of a situation which is certainly very different to any which the Federal Executive could have anticipated in the course of its friendly relations with the Kingdom of Great Britain.

If the facts are viewed impartially and calmly, on the one hand there will

be observed the eagerness of His Majesty's Government or of the legation in Caracas to discuss matters of comparatively secondary importance, many of which might be considered as investigated and settled, and, on the other, the just, the natural, the necessary interest of Venezuela to see her rights recognized and respected, rights which arise from the grave injuries caused by a ship which left English waters furnished with British papers, and by the undisguised facilities which, for the promotion of their designs, those persons found in the neighboring colony, who, within and without that vessel, prepared together all the harm suffered by the Republic from the month of January last up to the present time. Thus, the situation which forms the subject of your excellency's note can not be attributed to the Government of Venezuela, nor even to an indirect exercise of their will.

The effects resulting from that situation are in harmony with an order of ideas with which His Majesty's Government will closely sympathize, for they can not fail to understand and admit that a government, in defending their rights and performing their duty, must follow the course of action imposed upon them by circumstances which have not been of their own creation, and must adopt such rule of conduct as may be prescribed by necessities over which they had no control. In this respect Venezuela takes no step which can run counter to any formula of courtesy or to any principle of international law. Her conduct is, in all respects, in harmony with the legal aspects of the matter, and for her nothing would be more satisfactory, in view of the close bonds of her friendship for Great Britain, than to receive from the Government of that Kingdom some indication of the desire for the establishment of a mutual understanding to remedy the injuries caused by the steamship *Ban Righ* and the subsequent conduct of the authorities of Trinidad. Up to the present all that has been evident has been the most unfair refusal on the part of Great Britain to consider the matter, a refusal aggravated by a fact so recent as that of your excellency not having even answered the note which was sent to you on the 27th October, on the subject of the illegal dispatch of a large mail from Trinidad to places occupied by insurgents as is Ciudad Bolívar.

The serious incidents which, to the injury of Venezuela, have occurred since last January as the inevitable result of the acts of the *Ban Righ*, and owing to the conduct followed by the authorities of the neighboring colony, have been gravely considered here. The Government does not ask anything from Great Britain which is not a legitimate consequence of the nature of the affair, and therefore it appeals to the spirit of justice and to the fairness of His Majesty's Government to place the matter on a basis of mutual agreement, which is the only way of settling the abnormal situation to which the note of your excellency refers, and which the Government of the Republic is the first to deeply regret.

I avail, etc.,

R. LÓPEZ BARALT.

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*The Marquess of Lansdowne to M. Cambon.*

No. 165.]

FOREIGN OFFICE, *December 5, 1902.*

YOUR EXCELLENCY: I have given careful consideration to the memorandum which you were good enough to leave here on the 28th ultimo, calling attention to the treaty between France and Venezuela of 1885, and the protocol signed at Paris this year, by which a proportion of the Venezuelan maritime customs is assigned to the French creditors.



In reply, I have the honor to inform your excellency that His Majesty's Government are fully aware of the nature of the French claims upon a portion of the revenue derived from the maritime customs of Venezuela. In any measures to which His Majesty's Government may resort for the purpose of enforcing their claims against the Venezuelan Government care will be taken that French interests are not prejudiced.

I have, etc.,

LANSDOWNE.

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*The Marquess of Lansdowne to Sir R. Rodd.*

[Extract.]

No. 166.]

FOREIGN OFFICE, *December 5, 1902.*

I discussed with the Italian ambassador to-day the question of Italian participation in the measures about to be adopted by Great Britain and Germany against Venezuela.

His excellency told me that he had been instructed to explain to me the reasons that made it of importance that Italy should cooperate with us in any measures to be adopted for the purpose of coercing the Venezuelan Government.

I told M. Pansa that in principle I saw no objection to Italian participation. The difficulty in the way of it was this, that we had for some time past been discussing with the German Government the nature of the measures to be adopted for the purpose of enforcing compliance with our demands. The scope and character of those measures had required the most careful examination, not only on account of the manner in which they affected the two European powers concerned, but on account of the international questions to which they were calculated to give rise.

We had now arrived at an agreement, and it was proposed to take action immediately. There was really no time available for settling the conditions upon which Italy might join us, supposing that were desired. I ventured to suggest that, in the circumstances, it would be better for the Italian Government not to press their demand for the moment. I would, however, gladly undertake to discuss the matter with the German Government, and I thought it should be possible to find some means by which it would be made clear to all concerned that Italy was with us in what we were doing. All our preparations were now complete, and we were ready to take action at once. I might, indeed, say, without exaggeration, that it was almost an affair of hours. In the short interval of time which remained to us it was, I thought, physically impossible that we should come to an agreement "à trois" as to the part to be played by each of us.

His excellency told me that he realized the difficulty occasioned by the shortness of the time available. In the circumstances, it was probably impossible for an understanding to be arrived at so as to enable Italy to take part in the initial steps upon which Germany and Great Britain had already determined. He thought it, however, most desirable that there should be an exchange of ideas between the three powers as to the possibility of giving the Italian Government an opportunity of acting in concert with us for the purpose of protecting their interests. In the meanwhile, he thought an Italian ship or ships might visit Venezuelan waters for the purpose of showing that Italy was not indifferent to what was occurring.

I told his excellency that it would give me much pleasure to confer with the German Government as to the possibility of affording the Italian Government at a later stage such an opportunity as they desired. I added that it seemed to me perfectly natural that when events such as those which might be anticipated were likely to occur on the Venezuelan seaboard, the Italian Government should desire to be represented by an Italian ship or ships.

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*Foreign Office to Admiralty.*

No. 167.]

FOREIGN OFFICE, *December 6, 1902.*

SIR: I am directed by the Marquis of Lansdowne to state, for the information of the lords commissioners of the Admiralty, that His Majesty's chargé d'affaires at Rome has to-day reported by telegraph that the Italian Government are sending the *Bausan* from Port of Spain to La Guaira for the protection of Italian subjects, and are instructing her commander in a general way to offer any services he can render to the senior officers of the combined British and German squadrons in those waters.

I am, etc.,

F. H. VILLIERS.

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*Mr. Haggard to the Marquess of Lansdowne—(Received December 8).*

[Telegram.]

No. 168.]

CARACAS, *December 7, 1902.*

At 3 o'clock this afternoon both the British and German ultimatums were delivered.

*Mr. Haggard to the Marquess of Lansdowne—(Received December 9).*

[Telegram.]

No. 169.]

LA GUAIRA, *December 8, 1902.*

Referring to my immediately preceding telegram:

As I had received from the Venezuelan Government no answer to the ultimatum, I handed over charge of British interests to United States minister, and at 3 p. m. left Caracas for La Guaira, where I embarked on *Retribution*. The staff of His Majesty's legation accompanied me.

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*Admiralty to Foreign Office—(Received December 9).*

No. 170.]

ADMIRALTY, *December 9, 1902.*

SIR: I am commanded by my lords commissioners of the admiralty to transmit, for the information of the secretary of state for foreign affairs, copy of a telegram dated this day from the commodore at Trinidad, and I am to state that a telegram has been sent in reply signifying their lordship's approval.

I am, etc.,

EVAN MACGREGOR.

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[Inclosure.—Telegram.]

*Commodore, Trinidad, to Admiralty.*

PORT OF SPAIN, *December 9, 1902.*

You telegram received. *Indefatigable* arrived. Captain informs me German commodore has orders, if no satisfactory reply to ultimatum received, to seize Venezuelan Government ships. Captain of *Indefatigable* agreed on the 5th December to act in concert with Germans and start active measures, if ultimatum is rejected, at 3 p. m., the 9th December.

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*The Marquess of Lansdowne to Mr. Buchanan.*

[Extract.]

No. 171.]

FOREIGN OFFICE, *December 9, 1902.*

The German ambassador informed me to-day that the Italian ambassador at Berlin had presented a demand that Italy should be allowed to participate in the measures contemplated by Germany and Great Britain against Venezuela.

The German Government were prepared to accept this proposal in principle if His Majesty's Government do the same. It was in their opinion obvious that the participation of the Italian Government in the initial stages of these measures was no longer possible. The German Government were, however, ready to agree that, should a

blockade be resorted to, Italy might take part in it. They also considered that the Italian claims might well come before a mixed commission, should such a commission be appointed to deal with the German and British claims.

I replied that the proposals were virtually identical with the suggestions which we had already made in regard to the same subject.

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*Mr. Haggard to the Marquess of Lansdowne—(Received December 10).*

[Telegram.]

No. 172.]

LA GUAIRA, *December 9, 1902.*

Your telegram of the 2d instant.

I shall, if by 3 o'clock this afternoon I have received no satisfactory reply to the ultimatum, proceed in accordance with the instructions contained in that telegram and notify to the senior naval officer at Port of Spain by telegraph that I have done so.

It has been arranged between the British senior naval officer and the German commodore at La Guaira that they will take possession of all the Venezuelan vessels in that port to-day at 5 p. m. There are four of the latter.

The German ships will, after the Venezuelan ships are seized, disperse to the eastward and westward in order to communicate with the other German vessels of their squadron, but within a day or two the German commodore will return to La Guaira.

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*Mr. Haggard to the Marquess of Lansdowne—(Received December 10).*

[Telegram.]

No. 173.]

LA GUAIRA, *December 10, 1902.*

Three Venezuelan ships of war were brought out and another disabled by four boats from His Majesty's ship *Retribution*, armed with Maxim guns, and six boats from the German men-of-war. No resistance was offered.

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*Mr. Haggard to the Marquess of Lansdowne—(Received December 10).*

[Telegram.]

No. 174.]

LA GUAIRA, *December 10, 1902.*

President Castro, according to a report received from Caracas, refuses to allow the United States minister to take charge of British

and German interests, and has arrested the British consul and other English and German residents, whom he is said to be keeping as hostages.

The British vice-consul, with women and children, were brought on board ship during the night.

The German commodore, who is still here, has sunk the two vessels he captured.

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*Admiralty to Foreign Office—(Received December 11).*

No. 175.]

ADMIRALTY, December 11, 1902.

SIR: I am commanded by my lords commissioners of the Admiralty to transmit, for the information of the secretary of state for foreign affairs, a copy of a telegram, dated the 11th instant, which has been sent to the commander in chief on the North American and West Indies Station relative to the blockade of Venezuela.

I am, etc.,

EVAN MACGREGOR.

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[Inclosure.—Telegram.]

*Admiralty to Vice-Admiral Sir A. Douglas.*

ADMIRALTY, December 11, 1902.

It has been decided by His Majesty's Government that blockade of Venezuelan ports should be commenced at the earliest possible moment. Direct commodore to arrange with German commodore accordingly. No active steps to enforce blockade should be taken till notification has been published. Terms of notification of blockade and instructions to naval officers will follow shortly.

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*Sir M. Herbert to the Marquess of Lansdowne—(Received December 11).*

[Telegram.]

No. 176.]

WASHINGTON, December 10, 1902.

The following telegram from the United States minister at Caracas has just been communicated to me in confidence by Mr. Hay:

Received news at 7 to-night that all British and Germans here were being arrested. I drove at once to the police station, where I found many Germans. I asked the chief of police to release them. He referred me to the governor, who in turn referred me to President Castro. I told President that I must be authorized to represent Great Britain and Germany at once, or I could not answer for the consequences of his refusal. He consented, and granted my request.

I then obtained release of German banker (Blohm), and German doctor (Koehler), as personal favor from the President. Then I told President that he ought to release all the Germans and British. He was not willing, and I

told him that I should bring up the matter to-morrow. All British subjects are hiding. Excitement in the streets very great.

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*Sir M. Herbert to the Marquess of Lansdowne—(Received December 11).*

[Telegram.]

No. 177.]

WASHINGTON, December 11, 1902.

Following telegram from United States minister, Caracas, dated 10th December, has just been communicated to me by Secretary of State:

German legation attacked late last night by a mob. I went at once to the governor, and obtained police protection for German and British legations, and promise that no further attacks would be made by mobs.

I visited police station this morning, and talked with all the prisoners, who number 54 in all—44 Germans and 10 British, some of them so poor I gave them money for food; 4 are ill, and I expect to get them liberated within an hour. All British and Germans in Venezuela, I understand, have been arrested. This afternoon I shall see President, and urge him to release them all to-day.

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*Sir M. Herbert to the Marquess of Lansdowne—(Received December 11).*

[Telegram.]

No. 178.]

WASHINGTON, December 11, 1902.

Following telegram, dated to-day, from United States minister, Caracas, communicated by Secretary of State:

President informs me he has released all Germans and British who were arrested.

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*Sir M. Herbert to the Marquess of Lansdowne—(Received December 11).*

[Telegram.]

No. 179.]

WASHINGTON, December 11, 1902.

My telegram of yesterday relative to Venezuela.

I am informed by Mr. Hay that United States minister in Venezuela is acting with great energy, and that a good many British subjects have been given asylum at the United States legation, where they had taken refuge.

No information as to President Castro's intentions has yet been received from Mr. Bowen.



*Mr. Haggard to the Marquess of Lansdowne—(Received December 11).*

[Telegram.]

No. 180.]

LA GUAYRA, *December 11, 1902.*

British subjects, though arrested, as yet unharmed.

Embargo laid on all British enterprises.

British interests at La Guayra have to-day been placed under protection of United States consul here, by instructions from American minister at Caracas.

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*The Marquess of Lansdowne to Sir Herbert.*

[Telegram.]

No. 181.]

FOREIGN OFFICE, *December 11, 1902.*

Please express at once to Mr. Hay the thanks of His Majesty's Government for the action taken by the United States minister at Caracas, as reported in your excellency's telegram of yesterday. We feel convinced that Mr. Bowen will not cease to use all his influence and will spare no exertion in order that British subjects should be liberated and their proper treatment insured.

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*The Marquess of Lansdowne to Mr. Buchanan.*

[Extract.]

No. 182.]

FOREIGN OFFICE, *December 11, 1902.*

I had some further conversation with the German ambassador to-day as to the steps which should be taken in order to enforce the proposed blockade of the Venezuelan ports.

I said that, judging from the reports which had reached us as to President Castro's attitude, it seemed highly improbable that the seizure of the gunboats would bring the Republic to reason. That being so, and as our ships were actually in Venezuelan waters, I saw no reason why the blockade should not commence as soon as possible. It seemed to me, however, important that both powers should commence operations simultaneously, and I suggested that the two commodores should be instructed to communicate as to this, and to take action as soon as both were ready. To this Count Metternich agreed.

I told his excellency that we had, in consultation with our legal advisers, carefully considered the manner in which the blockade should be notified, as well as the instructions to be issued for the guidance of our naval officers. We had come to the conclusion that, as the same ports would in no case be blockaded by both powers, it would be better for each of us to issue our own notifications and our own instructions to our naval officers. This course had more than one advantage. In

the first place, it relieved us from the necessity of discussing and criticizing points of detail in the German proposals, and, in the next place, it relieved us from the necessity of offering explanations which might be regarded as applicable to the measures taken by Germany as well as those taken by ourselves.

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*Admiralty to Foreign Office—(Received December 12).*

No. 183.]

ADMIRALTY, *December 12, 1902.*

SIR: I am commanded by my lords commissioners of the Admiralty to transmit, for the information of the secretary of state for foreign affairs, copy of a telegram, dated the 11th instant, which has been sent to the commander in chief on the North American and West Indies Station, respecting the notification of blockade of the Venezuelan coast.

I am, etc.,

EVAN MACGREGOR.

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[Inclosure.—Telegram.]

*Admiralty to Vice-Admiral Sir A. Douglas.*

ADMIRALTY, *December 11, 1902.*

You are to issue the following notification:

"It is hereby notified that a blockade of the ports of La Guayra, Carenero, Guanta, Cumana, Carupano, and the mouths of the Orinoco, is declared, and will be effectively maintained from and after the — day of December, subject to an allowance of the following days of grace: For vessels sailing before the date of this notification from West Indian ports and from ports on the east coast of the continent of America, ten days for steamers and twenty days for sailing vessels; from all other ports, twenty days for steamers and forty days for sailing vessels; for vessels lying in ports now declared to be blockaded, fifteen days. Vessels which attempt to violate the blockade will render themselves liable to all measures authorized by the law of nations and the respective treaties between His Majesty and the different neutral powers.

"Given on board His Majesty's ship ———."

So soon after the receipt of this as may be possible you are to telegraph the date fixed for the commencement of the blockade, which has been left blank in the notification. In fixing the date you must be careful to allow sufficient time after the receipt by us of your telegram announcing the date to enable the notification to be issued here, as it is imperative the date in both documents should coincide. You must also bear in mind in any calculation you may make on this head the chance of a Sunday intervening, which would effectively interfere with the issue of a gazette.

The following are instructions for naval officers:

"His Majesty's Government having decided to enforce the legitimate claims of Great Britain against the Venezuelan Government by means of a blockade of the following ports on the Venezuelan coast: La Guaira, Carenero, Guanta, Cumana, Carupano, and the mouths of the Orinoco, desire you will issue the following instructions to the officers commanding His Majesty's ships under your orders which will be engaged in maintaining the blockade:

"1. Every merchant vessel sailing under other than the Venezuelan flag, which may be found by one of the blockading ships in the immediate neighborhood of a blockaded port, is to receive a special notification in accordance with the following procedure:

"2. An officer of the blockading ship is to be sent on board the merchant vessel. He is to notify to the master of the merchant vessel the existence and extent of the blockade, and is to inform him that he can not be permitted to communicate with the blockaded port, and that any attempt to do so in defiance of such warning will render his vessel liable to seizure and detention for trial in a prize court, with probable ultimate confiscation of ship and cargo.

"3. The boarding officer will then enter in the log book of the merchant vessel, and on the document which fixes her nationality, the name of His Majesty's ship by whom the notification in his person has been made, together with a statement of the terms of the notification and the date and place at which the visit was made, and to these entries he will affix his signature.

"4. Any such vessel which may appear to have an intention of breaking the blockade is to be ordered to quit the neighborhood under pain of seizure.

"5. Every merchant vessel sailing under other than the Venezuelan flag which, in defiance of the above notification, attempts to communicate with any of the blockaded ports, is to be seized and thereupon conveyed to Port of Spain, Trinidad, where she is to be handed over to the prize court.

"6. Merchant vessels which, on being boarded—

"(a) Produce obviously false papers;

"(b) Refuse or fail to produce the necessary documents to prove their nationality, identity, and destination—

are to be considered as attempting to break the blockade, and are to be ordered to quit the neighborhood under pain of seizure and ultimate confiscation.

"7. Merchant vessels sailing under the Venezuelan flag, or merchant vessels sailing under other than the Venezuelan flag, which may be proved to be in the service of the Venezuelan Government, are to be seized and treated as prize of war.

"8. The exceptions to the above instructions are as follows:

"(1) Ships which are bona fide in distress are to be permitted, as need shall arise, to enter or leave a blockaded port.

"(2) The blockade does not affect foreigners, that is to say, persons of other than Venezuelan nationality, who wish to leave the country.

"Ships under other than Venezuelan flag which have such persons on board, and possess certificates from their consuls, together with papers in proper form, will, after giving previous notice to the blockading ship, be allowed to pass. But such ships may have no cargo on board beyond the baggage of bona fide travelers.

"(3) Every consideration is to be given, compatible with the exigencies of the blockade, to British and German nationals and the subjects of neutral States."

A prize court will at once be established at Port of Spain.

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*The Marquess of Lansdowne to Sir M. Herbert.*

[Telegram.]

No. 184.]

FOREIGN OFFICE, *December 12, 1902.*

Please inform Mr. Hay that His Majesty's Government cordially appreciate the assistance rendered to British subjects by the United

States minister at Caracas, as reported in your excellency's telegrams of yesterday.

Owing to Mr. Bowen's vigorous action they have probably been spared much ill treatment.

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*Mr. White to the Marquess of Lansdowne—(Received December 13).*

No. 185.]

AMERICAN EMBASSY,  
London, December 13, 1902.

MY LORD: The Government of Venezuela has requested the American minister at Caracas to communicate to the Governments of His Britannic Majesty and of Germany, a proposition to the effect that the present difficulty respecting the manner of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration; and I have the honor, in accordance with instructions from my Government, to communicate this proposal to your lordship.

In view of the present condition of affairs in Venezuela, I venture to hope that it may be possible for you to enable me to inform my Government, at an early date, of the decision arrived at by His Majesty's Government with regard to the proposal in question.

I have, etc.,

HENRY WHITE.

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*The Marquess of Lansdowne to Mr. Buchanan.*

No. 186.]

FOREIGN OFFICE, December 13, 1902.

SIR: I received this evening a communication from Count Metternich to the effect that the German Government were specially desirous to remove all points of difference in dealing with the Venezuelan question. There need be no delay in the commencement of operations, and the German commodore had been instructed to make all the necessary arrangements with Admiral Douglas. The German Government did not press for an identic notification of blockade, but thought the announcement should be simultaneous.

Count Metternich mentioned a proposal that the Italian ships should blockade two ports to the westward of La Guaira. With regard to the exact nature of Italian cooperation, I have told M. Pansa that this seemed to be a matter for settlement between the naval officers on the spot.

I am, etc.,

LANSDOWNE.

*Mr. Haggard to the Marquess of Lansdowne—(Received December 14).*

[Telegram.]

No. 187.]

PORT OF SPAIN, *December 14, 1902.*

A note from the Venezuelan Government, dated the 9th instant, was brought to me the following day, shortly before I left La Guaira, by the United States consul, who had received instructions to that effect from the United States minister at Caracas. The note purports to be a reply to the ultimatum, but makes no allusion to the definitive character of that document. It is of the usual contentious nature, and complains that no reparation is offered by His Majesty's Government for the acts of the steamship *Ban Righ* and the attitude taken up by Trinidad authorities. It ends by asserting that it is impossible for the Venezuelan Government to meet their debts at present, as their treasury is empty. It will not be necessary, they add, to remind them of their obligations as soon as peace is declared.

A similar note was received at the same time by the German representative.

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*Mr. Haggard to the Marquess of Lansdowne—(Received December 14).*

[Telegram.]

No. 188.]

PORT OF SPAIN, *December 14, 1902.*

Telegram received to-day states embargo removed from La Guaira harbor corporation.

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*M. Grénier to the Marquess of Lansdowne—(Received December 15).*

No. 189.]

LÉGATION DE BELGIQUE,  
*Londres, le 14 décembre 1902.*

M. LE MARQUIS: Les événements au Vénézuéla pouvant amener les forces britanniques à prendre possession des douanes de ce pays, mon gouvernement juge opportun de faire connaître au gouvernement de Sa Majesté Britannique que les intérêts belges, comme ceux de la France, sont garantis par les douanes vénézuéliennes.

Je suis chargé en conséquence de faire valoir auprès de votre seigneurie le droit primordial, sur une partie des revenus de ces douanes, qui appartiendrait à la Belgique, dans cette éventualité.

Je saisis, etc.,

ALBÉRIC GRÉNIER,

[Translation.]

BELGIAN LEGATION,

*December 14, 1902.*

MY LORD: Inasmuch as the events in Venezuela may lead the British forces to take possession of the custom-houses of that country, my Government consider it desirable to inform His Britannic Majesty's Government that Belgian interests, as well as French interests, are guaranteed by the Venezuelan customs.

I have therefore been directed to make known to your lordship the prior right which Belgium would have, in such an eventuality, to a part of the revenues of those customs.

I avail, etc.,

ALBÉRIC GRÉNIER.

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*The Marquess of Lansdowne to Mr. Buchanan.*

[Extract.]

No. 190.]

FOREIGN OFFICE, *December 15, 1902.*

The German ambassador called on me to-day, at my request, and I discussed with him the proposal made to His Majesty's Government by that of Venezuela through the Government of the United States in regard to the possibility of settling by arbitration the claims which had been preferred by the British and German Governments against that of Venezuela for injuries to British and German subjects. I told Count Metternich that the proposal which had, I understood, also been made to the German Government, had not yet been considered by the cabinet, but that, as the American chargé d'affaires was to call upon me later in the afternoon, I had thought it desirable that his excellency and I should at all events have a preliminary conversation on the subject.

Count Metternich told me that he had not yet received any instructions from the German Government. Speaking, however, for himself, he observed that while we should, no doubt, all of us desire to meet such a proposal in a manner agreeable to the United States Government, there seemed to him to be considerable objections to encouraging the idea of arbitration. He observed, moreover, that the proposal was merely passed on to us, and not in any way supported by the United States Government. His excellency further pointed out that it was apparently one which would apply only to claims for injuries sustained "during the insurrection," a limitation which might exclude many of our claims. It was again to be borne in mind that the German claim for injuries sustained between 1898 and 1900 had already been carefully examined by the German Government, and



would therefore probably not be considered by them to be "arbitrable." Besides this, both the German and British Governments had already agreed that the bulk of their claims should be examined by a mixed commission. This ought to afford a sufficient guarantee that Venezuela would not be unfairly treated.

I promised his excellency that I would communicate with him further upon the subject as soon as possible.

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*The Marquess of Lansdowne to Sir M. Herbert.*

No. 191.]

FOREIGN OFFICE, *December 15, 1902.*

SIR: The American chargé d'affaires called on me to-day for the purpose of discussing the proposal which the United States Government had received from the Government of Venezuela, viz, that the present difficulty respecting the manner of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration.

I told Mr. White that I had not yet had an opportunity of laying the proposal before my colleagues. It was one which obviously would require very careful examination. I noticed, for instance, that the reference to arbitration appeared to be strictly limited to a certain class of claims, thereby excluding or providing no means of settlement for others which might be of equal or even greater importance.

I also mentioned to Mr. White that I observed that the proposal was merely forwarded to us by the United States Government, and not in any way recommended for our acceptance.

Mr. White said that this was no doubt the case.

I promised to inform him as soon as possible of the manner in which the matter was regarded by His Majesty's Government.

I am, etc.,

LANSDOWNE.

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*Admiralty to foreign office—(Received December 16.)*

No. 192.]

ADMIRALTY, *December 16, 1902.*

SIR: I am commanded by my lords commissioners of the Admiralty to transmit, for the information of the secretary of state for foreign affairs, copy of a telegram, dated the 16th instant, from the commodore, His Majesty's ship *Charybdis*, relative to the bombardment of Puerto Cabello.

I am, etc.,

EVAN MACGREGOR.

[Inclosure.—Telegram.]

*Commodore Montgomerie to Admiralty.*CHARYBDIS, AT LA GUAIRA,  
December 16, 1902.

*Charybdis* and *Vineta* arrived at Puerto Cabello 13th December; found captain and crew of British steamer *Topaze* had been imprisoned and illtreated. They were afterwards released, but captain compelled to haul down colors. I brought out ship and verbally demanded apology for insult to British flag, and assurance that British and German subjects would not be molested, threatening to shell fort if no answer by given time. Subsequently sent letter to same effect from British and German commodores. Receiving no answer, *Charybdis* and *Vineta* shelled Forts Libertador and Vigia, both clear of town, previously warning governor to remove garrison and prisoners; resistance practically nil after landing and destroying guns. German commodore backed me up most loyally. United States consul gave much assistance as a go-between. Believe no lives lost. Leaving immediately for Curaçao.

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*The Marquess of Lansdowne to Mr. Buchanan.*

[Extract.]

No. 193.]

FOREIGN OFFICE, December 16, 1902.

The German ambassador informed me to-day that he had received instructions from the German Government with regard to the Venezuelan proposal for arbitration. His instructions agreed with the views which he had expressed to me yesterday as those which he himself entertained, and which are recorded in my dispatch to you of yesterday's date.

I informed his excellency that the Venezuelan proposal, as it stood, was unacceptable. Our reasons for holding this opinion corresponded in the main with those which the German Government had advanced. We were, however, inclined to admit that, while it was impossible for us to accept arbitration in regard to our claims for compensation in cases where injury had been done to the person and property of British subjects by the misconduct of the Venezuelan Government, it was not necessary to exclude the idea of arbitration in reference to claims of a different kind. We had already provided for the reference of such claims to a mixed commission. It seemed to us, in these circumstances, worthy of consideration whether we might not admit the principle of arbitration in regard to these claims, and perhaps invite the United States to arbitrate upon them.

I told his excellency that, in my opinion, it would be desirable that, whatever might be decided, we should send separate replies to the Venezuelan proposal, although I thought that we should endeavor to make them as similar as possible in substance.

*Memorandum communicated by Count Metternich, December 17, 1902.*

• No. 194.]

A memorandum communicated to the Reichstag by Count Bülow on the 9th instant contains the following:

By the civil wars which have taken place in Venezuela during the years 1898 to 1900, and again since the end of last year, numerous German merchants and landowners have suffered serious injury; partly through the exaction of forced loans, partly by the appropriation without payment of supplies found in their possession, especially cattle for feeding the troops, and, lastly, by the plundering of their houses and the devastation of their lands. The total of these damages, as regards the civil wars during the years 1898 to 1900, amounts to roughly 1,700,000 bolivars (francs), while for the last civil war damages to the extent of, roughly, 3,000,000 bolivars have already been reported. Some of the injured parties have lost almost the whole of their property, and have thereby inflicted loss on their creditors living in Germany.

\* \* \* Of the few German claims which were laid before the Venezuelan Claims Commission of 1901, several were dismissed at once, while others were reduced in an evidently arbitrary manner. For instance, a German cattle owner, who had had about 3,800 head of cattle seized, representing a value of, roughly, 600,00 bolivars, was awarded a compensation of 14,000 bolivars. Moreover, the Government did not even pay the amounts awarded by the commission, but informed the complainants that reference would be made to Congress.

It may be added that the Germans in the latest civil war have been treated in a particularly inimical manner. The acts of violence, for instance, which were committed by the Government troops when they plundered Barquisimeto were principally committed at the expense of German houses. This attitude of the Venezuelan authorities would, if not punished, create the impression that Germans in Venezuela were abandoned without protection to the arbitrary will of foreigners, and would be calculated seriously to detract from the prestige of the Empire in Central and South America, and be detrimental to the large German interests which have to be protected in those regions.

The claim on behalf of the Great Venezuela Railway, which is German enterprise, is now calculated at 7, 500,000 bolivars, equals about £300,000, and is running on.

Count Metternich, in forwarding a copy of the memorandum, points out that the German claims are not only pecuniary, but also based on the ill-treatment of Germans by the Venezuelan authorities.

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*The Marquess of Lansdowne to Sir M. Herbert.*

No. 195.]

FOREIGN OFFICE, *December 17, 1902.*

SIR: The American chargé d'affaires told me to-day that he had received instructions to inform me that the Venezuelan Government now earnestly wished for arbitration, which, in the opinion of the United States Government, seemed to afford a most desirable solution of the question in this dispute.

I told Mr. White that I hoped to be able very early to make him aware of our conclusion.

I am, etc.,

LANSDOWNE.

*Mr. Haggard to the Marquess of Lansdowne—(Received December 18).*

No. 196.]

CARACAS, November 27, 1902.

MY LORD: With reference to my dispatch of the 15th instant, I have the honor to inclose a copy of a note which I have addressed to the Venezuelan Government respecting the claim of James Nathan Kelly, no reply having hitherto been sent to Doctor Blanco's note to me of the 19th June, 1901.

In my note I point out that the evidence of the Government witnesses, instead of disproving, actually confirms Mr. Kelly's statements as to the pillaging of his property, and requests that the amount claimed, *i. e.*, \$3,640, may be paid to him.

I have, etc.,

W. H. D. HAGGARD.

[Inclosure.]

*Mr. Haggard to Señor Baralt.*

CARACAS, November 20, 1902.

M. LE MINISTRE: In Doctor Blanco's note of the 19th June, 1901, his excellency was good enough to forward to me some declarations contradicting the statements of James Nathan Kelly, a British subject, as to his not having interfered in politics, and as to his having been brought before a court-martial, though they deny that the damage done was as great as that represented. They, however, allow that his house and property were pillaged, but would seem to justify these acts of violence by the assertion that Mr. Kelly had been taking part in politics; they do not explicitly deny that \$1,500 were taken, only asserting that they do not believe that Mr. Kelly had that sum in possession.

I have in my possession three affidavits, duly executed in the Venezuelan Consulate in Trinidad, one of them by Pedro Ducharme, who declares himself to have been the revolutionary chief of the district of Merino, in the State of Sucre, against the dictatorship of Gen. Cipriano Castro, and as having been an official in that district under the Governments of Crespo and Andrade, and that the British subject, James Nathan Kelly, had never been involved in the political affairs of Venezuela, as also that he had never rendered him, Ducharme, any service, either directly or indirectly, in the revolutionary cause.

The other two witnesses, in addition to their evidence, confirming that of Señor Pedro Ducharme, give details as to Mr. Kelly being a man of substantial property.

These documents are at your excellency's disposition, should you wish to peruse them.

As it is clear from the evidence furnished by the Venezuelan Government that Mr. Kelly's property was pillaged, and the excuse offered for this act of

violence, even if it had any validity in itself, has been shown to have no basis in fact, while no evidence has been offered to prove that Mr. Kelly's statement of losses is otherwise than correct. I confidently trust that your excellency will take the necessary steps to cause the sum of \$3,640 to be paid to Mr. James Nathan Kelly for the damage done to his estate through the action of the agents of the Venezuelan Government.

I have etc.,

W. H. D. HAGGARD.

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*Admiralty to Foreign Office—(Received December 18).*

No. 197.]

ADMIRALTY, *December 18, 1902.*

SIR: I am commanded by my lords commissioners of the Admiralty to transmit, for the information of the secretary of state for foreign affairs, copy of a telegram dated the 17th instant from the commander in chief, North America and West Indies.

I am, etc.,

EVAN MACGREGOR.

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[Inclosure.—Telegram.]

*Vice-Admiral Sir A. Douglas to Admiralty.*

PORT OF SPAIN, *December 17, 1902.*

My ships are ready now. German commodore will be ready the 20th instant.

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*The Marquess of Lansdowne to Sir M. Herbert.*

No. 198.]

FOREIGN OFFICE, *December 18, 1902.*

SIR: I informed the United States chargé d'affaires this afternoon that the cabinet had decided at its last meeting on the 16th to accept in principle the idea of settling the Venezuelan dispute by arbitration, and we had since ascertained that the view of the German Government was in accord with our own. We considered, however, that some of our claims were of such a kind that we could not include them in the reference. I said that I could not give him at that moment a precise description of the excluded claims, but that I should be able to do so shortly. I was authorized to say that it would be extremely agreeable to His Majesty's Government if the President of the United States would consent to act as arbitrator.

It was satisfactory to me to find that both Governments had come to a conclusion which, judging from the communication which he had made to me last night, was likely to be received with satisfaction by the United States Government.

I added that we did not propose for the present to desist from the measures of coercion now in progress.

I am, etc.,

LANSDOWNE.

*The Marquess of Lansdowne to Sir F. Lascelles.*

[Extract.]

No. 199.]

FOREIGN OFFICE, *December 18, 1902.*

The German ambassador informed me to-day that the German Government were in entire agreement with us as to the manner in which the Venezuelan proposal for arbitration should be treated.

They proposed to thank the United States Government for their good offices in communicating the Venezuelan proposal, and to say that it seemed to offer a sufficient basis for a just settlement of the dispute. They desired, however, to make certain reservations, which his excellency subsequently embodied in a written memorandum, running as follows:

1. The claims *which rank first* are not in their present shape suited for settlement by arbitration. These claims which, as far as Germany is concerned, represent the demands of German subjects in connection with the Venezuelan civil wars of 1898 to 1900, and which are specified in the memorandum presented to the Reichstag, must therefore be immediately recognized by the Venezuelan Government. In case the latter should be unable to meet these demands immediately, *reliable guarantees must at least be given for a speedy payment.*

2. All further demands contained in the two ultimatums shall be submitted to the proposed court of arbitration. The latter will therefore have to consider not only the claims in connection with the present Venezuelan civil war, but also, as far as Germany is concerned, the demands mentioned in the memorandum laid before the Reichstag of German subjects arising from the nonfulfillment of liabilities incurred by contract by the Venezuelan Government. The court of arbitration will have to decide both on the material justification of the demands and on the ways and means of their settlement and security.

3. We should be thankful if the President of the United States of America would be prepared to accept the office of arbitrator.

Should, however, the United States Government not be inclined to hold themselves responsible for the fulfillment of the award by Venezuela, which, in the present circumstances, and considering President Castro's disposition, it may be rather difficult to guarantee, there will be no other course open but to intrust The Hague Court of Arbitration with the settlement of the matter.

The Government of the United States of America would be conferring an obligation on us if, by exerting their influence over the Venezuelan Government, they could succeed in persuading the latter to accept these proposals.

Count Metternich was instructed to inquire whether an answer on



the above lines would meet with our approval. If so, the German Government would at once inform the United States ambassador at Berlin. It was, however, to be clearly understood that the consideration of these proposals would not oblige the two powers to desist from the coersive measures now in progress.

His Excellency added that, since these instructions had been issued, the German Government had received a communication identical with that which had been addressed yesterday evening to His Majesty's Government by the United States chargé d'affaires, intimating the hope of the United States Government that the two powers would resort to arbitration.

This communication did not, in the view of the German Government, affect the proposals above described.

I told his excellency that I would communicate his statement to the Cabinet, which was to meet in the afternoon, and that I had little doubt that, in principle, the two Governments would be found to entertain similar views.

I was able, later in the afternoon, to inform his excellency that the Cabinet agreed to arbitration as a means of settling the dispute, subject to the following reservations, which he undertook to communicate to the German Government:

1. The shipping claims are not to be referred to arbitration.
2. In cases where the claim is for injury to, or wrongful seizure of, property, the questions which the arbitrators will have to decide will only be—
  - (a) Whether the injury took place, and whether the seizure was wrongful; and
  - (b) If so, what amount of compensation is due.That, in such cases, a liability exists, must be admitted in principle.
3. In the case of claims other than the above, we are ready to accept arbitration without any reserve.

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*Foreign Office to admiralty.*

No. 200.]

FOREIGN OFFICE, *December 18, 1902.*

SIR: I am directed by the Marquis of Lansdowne to acknowledge the receipt of your letter of this day's date, inclosing copy of a telegram from the commander in chief on the North America and West Indies Station.

Sir A. Douglas reports that the ships under his command are ready to commence operations, and that the German commodore will be ready on the 20th instant. In these circumstances I am to request that the commander in chief may be immediately instructed to issue his notification and to establish the blockade on the 20th instant.

Arrangements will be made for the issue of a special supplement to the London Gazette on the 20th, and for the notification of the blockade to foreign powers.

I am, etc.,

F. H. VILLIERS.

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*M. Delcassé to M. Cambon.—(Communicated by M. Cambon, December 19.)*

No. 201.]

PARIS, le 18 décembre 1902.

Affaires du Vénézuéla.

Les gouvernements des Etats-Unis, d'Espagne, et de Belgique, ayant décidé de réclamer la clause de la nation la plus favorisée pour le règlement de toutes les demandes d'indemnités de leurs ressortissants, le gouvernement de la République a cru devoir également assurer toutes garanties aux intérêts de ses nationaux.

Le représentant français à Caracas a, en conséquence, été invité à réclamer pour la liquidation de nos réclamations fondées sur des faits postérieurs au 23 mai 1899, un mode de règlement et de paiement aussi favorable que celui obtenu par toute autre puissance.

Quant à nos réclamations pour faits antérieurs au 23 mai 1899 (c'est-à-dire, l'élection du Président Castro), leur mode de règlement a été prévu par le traité de 1885 et le protocole de 1902; mais comme il y a lieu de veiller à ce que nos avantages sur ce point ne soient pas diminués, le représentant français a également reçu pour instruction, au cas où l'une des autres puissances créancières obtiendrait pour ses réclamations remontant à la même époque un mode de règlement plus avantageux, d'en réclamer aussitôt le bénéfice.

Comme nous tenons en ces circonstances à tenir le gouvernement britannique au courant de nos résolutions, je vous prie de lui faire connaître verbalement le sens des instructions envoyées à notre agent.

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[Translation.]

PARIS, December 18, 1902.

Affairs of Venezuela.

The Governments of the United States, Spain, and Belgium having decided to claim most-favored-nation treatment for the settlement of all the demands for compensation made by their citizens or subjects, the Government of the Republic have thought it right also to secure every guarantee for the interests of their nationals.

The French representative at Caracas has, consequently, been requested to claim for the adjustment of our claims founded on events subsequent to the 23d May, 1899, a method of settlement and payment equally favorable with that obtained by any other power.

As to our claims in respect of events prior to the 23d May, 1899

(that is to say, the election of President Castro), the method of settling these claims was provided for by the treaty of 1885 and the protocol of 1902; but as it is necessary to see that our privileges, in this regard are not diminished, the French representative has also been instructed, should one of the other creditor powers obtain for its claims of the same date a more advantageous method of settlement, to claim the benefit of such method at once.

As we are anxious in these circumstances to keep the British Government informed of our intentions, I request that you will make known to them verbally the sense of the instructions sent to our agent.

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*Admiralty to Foreign Office—(Received December 19).*

No. 202.]

ADMIRALTY, December 19, 1902.

SIR: I am commanded by my lords commissioners of the Admiralty to transmit, for the information of the secretary of state for foreign affairs, copy of a telegram dated 18th instant, which has been sent to the commander in chief, North America, respecting the blockade of the Venezuelan coast.

I am, etc.,

EVAN MACGREGOR.

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[Inclosure.—Telegram.]

*Admiralty to Vice-Admiral Sir A. Douglas.*

ADMIRALTY, December 18, 1902.

You are to issue notification and commence blockade on the 20th instant, informing German commodore so as to secure simultaneous action. Notification will also be issued from here on that day.

Instruct commanding officers of blockading ships that mail steamers are subject to blockade restrictions and should not be allowed to communicate with blockaded ports. At the same time the master of each mail steamer should be informed that if he chooses to transfer his mails to the blockading ship, the latter will, so far as may be practicable, endeavor to land them. This may be done by signaling for a boat to be sent from the shore, but, if necessary, the mails may be sent ashore in a man-of-war boat under a flag of truce, all due precautions being taken.

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*Mr. White to the Marquess of Lansdowne—(Received December 19).*

No. 203.]

AMERICAN EMBASSY,  
London, December 19, 1902.

MY LORD: I have the honor to inform your lordship that Mr. Bowen, the American minister to Venezuela, has informed my Government by telegraph that the Venezuelan Government has conferred

upon him full powers to enter into negotiations on the part of Venezuela to settle the present difficulties with Great Britain, Germany, and Italy.

I am instructed by Mr. Secretary Hay to communicate the Venezuelan proposition to your lordship, and to ascertain whether His Majesty's Government be disposed to assent thereto.

I have, etc.,

HENRY WHITE.

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*The Marquess of Lansdowne to Mr. White.*

No. 204.]

FOREIGN OFFICE, *December 19, 1902.*

SIR: I have had the honor to receive your note of to-day's date, informing me that Mr. Bowen, the American minister at Caracas, had informed the United States Government that the Venezuelan Government had conferred upon him full powers to enter into negotiations on the part of Venezuela to settle the present difficulties with Great Britain, Germany, and Italy.

His Majesty's Government have, as you are aware, already accepted the proposal of the Venezuelan Government to refer to arbitration the matters in controversy between the two Governments, and have expressed their hope that the President of the United States will consent to act as arbitrator. The conditions under which such arbitration might take place have been fully considered, and I hope very shortly to make you aware of them.

In these circumstances His Majesty's Government prefer not to abandon the proposals which they have already made—proposals which seem to them to afford every hope of a satisfactory settlement—in order to adopt the alternative procedure which the Venezuelan Government have apparently now suggested.

I have, etc.,

LANSDOWNE.

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*The Marquess of Lansdowne to Baron Grenier.*

No. 205.]

FOREIGN OFFICE, *December 19, 1902.*

SIR: I have the honor to acknowledge the receipt of your note of the 14th instant, calling attention to the fact that there are Belgian as well as French claims upon a portion of the revenue derived from the maritime customs of Venezuela.

In reply, I have the honor to inform you that in any measures to which His Majesty's Government may resort for the purpose of enforcing their claims against the Venezuelan Government, care will be taken that Belgian interests are not prejudiced.

I have, etc.,

LANSDOWNE.

*Extract from the London Gazette of December 20, 1902.*

No. 206.]

It is hereby notified that as the United States of Venezuela have failed to comply with the demands of His Majesty's Government, a blockade by His Majesty's naval forces of the ports of La Guaira, Carenero, Guanta, Cumana, Carupano, and the mouths of the Orinoco is declared, and such blockade will be effectively maintained from and after the 20th day of December, subject to an allowance of the following days of grace: For vessels sailing before the date of this notification from West Indian ports, and from ports on the east coast of the continent of America, ten days for steamers and twenty days for sailing vessels; from all other ports, twenty days for steamers and forty days for sailing vessels; for vessels lying in ports now declared to be blockaded, fifteen days. Vessels which attempt to violate the blockade will render themselves liable to all measures authorized by the laws of nations and the respective treaties between His Majesty and the different neutral powers.

FOREIGN OFFICE, *December 20, 1902.*

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*The Marquess of Lansdowne to Sir F. Lascelles.*

No. 207.]

FOREIGN OFFICE, *December 22, 1902.*

SIR: I inclose, for your excellency's information, a copy, received from Count Metternich, of the reply which the German Government will return to the proposals made by Venezuela through the United States Government.

I have, etc.,

LANDSDOWNE.

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[Inclosure.—Translation.]*German Government to United States Embassy at Berlin.*

The Imperial Government wish to express to that of the United States their best thanks for the efforts of the latter to settle in a satisfactory manner the undesired controversy with Venezuela. The proposal made by the United States that an arbitrator should be appointed seems both to Germany and England to be a satisfactory basis for arriving at a fair settlement of their claims. But the two powers consider it necessary to make certain reservations:

1. Among their claims are some which in their present stage are not suited for submission to arbitration. Claims of this nature, so far as Germany is concerned, are those which originated in the Venezuelan civil wars from 1898 to 1900, and of which details are given in the inclosed memorandum of the 8th December, which was communicated to the Reichstag. It will be seen that they consist of claims on account of acts of violence on the part of the Venezuelan Government or their agents, and that after years of procrastination, and in spite of the repeated representations made by the Imperial Government,

satisfactory compensation has been refused in a well-nigh insulting manner. This class of claims, which after careful examination by the Imperial Government amount to a total of 1,700,000 bolivars (\$325,000), will therefore have to be admitted by the Venezuelan Government without delay; and the latter must, if they are unable to pay at once, give at least a safe guarantee for prompt payment.

2. All other claims which have been put forward in the two ultimata could be submitted to the arbitrator, and the latter will therefore have to deal not only with the claims arising out of the present civil war in Venezuela, but also, so far as Germany is concerned, with the claims of German subjects in connection with the nonfulfillment of the engagements alluded to in the above-mentioned memorandum, which the Venezulean Government have undertaken under contracts made with those Germans.

3. The arbitrator will have to decide both about the intrinsic justification of each separate claim and about the manner in which they are to be satisfied and guaranteed. In the case of claims in connection with damage done to or unjustifiable seizure of property, the Venezuelan Government will have to recognize their liability in principle, so that the question of liability will not form the subject of arbitration, but the arbitrator will be concerned solely in the questions of the illegality of the damage or seizure, and also of the amount of compensation to be awarded.

The Government of the United States of America would be conferring an obligation on the Imperial and British Governments if, by exerting their influence over the Venezuelan Government, they could succeed in persuading the latter to accept these proposals. The two Governments would also be grateful if the President of the United States were disposed to undertake the office of arbitrator under the above conditions.

Should the President of the United States not be inclined to do so, which would be to the regret of the two Governments, they are also prepared to submit the matter to the arbitration tribunal at The Hague.

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*The Marquess of Lansdowne to Sir M. Herbert.*

No. 208.]

FOREIGN OFFICE, *December 22, 1902.*

SIR: The United States chargé d'affaires called at this office on the 20th instant and informed me that, while the President would not decline any service desired by the powers interested for the settlement of pending claims against Venezuela, he desired to intimate that he would regard it as altogether desirable that the matter should be referred to The Hague Court of Arbitration.

Mr. White told me yesterday that the President had informed the Venezuelan Government of the invitation which would probably be extended to him, and had inquired whether it was also their wish that he should act as arbitrator. In the meantime the President desired to know more precisely the reservations of the subject-matter of arbitration contemplated by the powers.

Mr. White called here again to-day and recurred to the subject, asking me whether our knowledge of the manner in which the Presi-



dent regarded the proposal was likely to modify our attitude with reference to it.

I told Mr. White that I felt sure that His Majesty's Government would not desire to withdraw from the proposal which they had made, and that they would greatly regret the President's inability to give us the benefit of his assistance. The chorus of approbation with which the idea of arbitration by the President had been received by all concerned strengthened me in my belief that it would be a matter for much regret should the President deem it impossible for him to undertake the task.

Mr. White asked whether, should the President decide upon refusing, we were prepared to refer the question to The Hague Tribunal.

I replied in the affirmative.

I promised Mr. White to give him, as soon as possible, the information which the President desired with regard to our reservations.

I am, etc.,

LANSDOWNE.

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*Memorandum communicated to Mr. White, December 23, 1902.*

No. 209.]

His Majesty's Government have, in consultation with the German Government, taken into their careful consideration the proposal communicated by the United States Government at the instance of that of Venezuela.

The proposal is as follows:

That the present difficulty respecting the manner of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration.

The scope and intention of this proposal would obviously require further explanation. Its effect would apparently be to refer to arbitration only such claims as had reference to injuries resulting from the recent insurrection. This formula would evidently include a part only of the claims put forward by the two Governments, and we are left in doubt as to the manner in which the remaining claims are to be dealt with.

Apart, however, from this, some of the claims are of a kind which no Government could agree to refer to arbitration. The claims for injuries to the person and property of British subjects owing to the confiscation of British vessels, the plundering of their contents, and the maltreatment of their crews, as well as some claims for the ill-usage and false imprisonment of British subjects, are of this description. The amount of these claims is comparatively insignificant, but the principle at stake is of the first importance, and His Majesty's

Government could not admit that there was any doubt as to the liability of the Venezuelan Government in respect of them.

His Majesty's Government desire, moreover, to draw attention to the circumstances under which arbitration is now proposed to them.

The Venezuelan Government have during the last six months had ample opportunities for submitting such a proposal. On the 29th July, and again on the 11th November, it was intimated to them in the clearest language that unless His Majesty's Government received satisfactory assurances from them, and unless some steps were taken to compensate the parties injured by their conduct, it would become necessary for His Majesty's Government to enforce their just demands. No attention was paid to these solemn warnings, and, in consequence of the manner in which they were disregarded, His Majesty's Government found themselves reluctantly compelled to have recourse to the measures of coercion which are now in progress.

His Majesty's Government have, moreover, already agreed that in the event of the Venezuelan Government making a declaration that they will recognize the principle of the justice of the British claims, and that they will at once pay compensation in the shipping cases and in the cases where British subjects have been falsely imprisoned or maltreated, His Majesty's Government will be ready, so far as the remaining claims are concerned, to accept the decision of a mixed commission, which will determine the amount to be paid and the security to be given for payment. A corresponding intimation has been made by the German Government.

The mode of procedure seemed to both Governments to provide a reasonable and adequate mode of disposing of their claims. They have, however, no objection to substitute for the special commission a reference to arbitration, with certain essential reservations. These reservations are, so far as the British claims are concerned, as follows:

1. The claims (small, as has already been pointed out, in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews, and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration.

2. In cases where the claim is for injury to or wrongful seizure of property, the questions which the arbitrators will have to decide will only be (*a*), whether the injury took place, and whether the seizure was wrongful; and (*b*), if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

3. In the case of claims other than the above, we are ready to accept arbitration without any reserve.

It would, in the opinion of both Governments, be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security

to be given by the Venezuelan Government, and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

Should the President of the United States be willing to undertake the task of arbitrator, the British and German Governments would avail themselves of his good offices with the highest satisfaction.

If it should unfortunately prove impossible for the President to render this important service to the two Governments, they are prepared to refer the questions at issue to arbitration by The Hague Tribunal.

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*The Marquess of Lansdowne to Sir M. Herbert.*

No. 210.]

FOREIGN OFFICE, *December 23, 1902.*

SIR: I communicated to the United States chargé d'affaires to-day a memorandum, of which I inclose a copy,\* in reply to the proposal made by the Venezuelan Government and communicated by the United States Government on the 13th instant.

I repeated to Mr. White that it would be a matter of sincere regret to His Majesty's Government if the President should feel unable to undertake the duty of arbitrator.

I am, etc.,

LANSDOWNE.

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*The Marquess of Lansdowne to Sir R. Rodd.*

No. 211.]

FOREIGN OFFICE, *December 26, 1902.*

SIR: The first secretary of the Italian embassy called here this afternoon and was informed, in reply to inquiries, that His Majesty's Government had not made any formal declaration of war against Venezuela. He was further told that a British prize court had been established at Port of Spain.

M. Carignani stated that, in answer to the proposals for arbitration, his Government had expressed their readiness to submit the matters in dispute between Italy and Venezuela. The Italian Government hoped that the President of the United States would consent to act as arbitrator, but if this were refused they were ready to accept a reference to The Hague Tribunal.

So far as Italy was concerned, two reserves were made: (1) That all Italian claims should be submitted, so that there should be no question of dispute left outstanding between the two countries; (2)

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\* No. 209.

that Italian claims should receive equal treatment with those put forward by Great Britain and Germany, and that they should have equal security for payment assigned to them.

I am, etc.

LANSDOWNE.

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*Mr. White to the Marquess of Lansdowne—(Received December 27).*

No. 212.]

AMERICAN EMBASSY,  
*London, December 27, 1902.*

MY LORD: With reference to recent interviews with your lordship relative to the submission to arbitration of the questions at issue between Great Britain and Venezuela, and particularly to the memorandum which you were so good as to hand me on the 23d instant, I have the honor to inform you that the President of the United States profoundly appreciates the courtesy with which the powers in interest have suggested his name as arbitrator in the matters now pending in Venezuela; and if no other—or no better—means of settling the subjects in dispute presented themselves, he would willingly comply with the wishes of the powers and give his best efforts to an end so laudable. But the President has thought it most desirable from the beginning that the entire controversy should be submitted to the judgment of that high tribunal at The Hague which has been created by the principal powers of the world for the consideration of precisely such causes, involving, as the present controversy does, no question of national honor nor the cession of territory.

After a thorough consultation with all the powers concerned, during which the President has found an honorable spirit of candor and of mutual consideration animating every one of them, he has been greatly gratified to learn that, in the event of his not undertaking the important duty to which the powers have invited him, they would all be willing to accept a reference to The Hague.

The President has, therefore, the greatest pleasure in announcing to the Governments of Great Britain, Germany, Italy, and Venezuela that all of them have accepted in principle the proposition of a reference of pending questions to the tribunal of The Hague.

If the President can be of any further service in arranging the preliminaries of such an understanding, he will gladly hold himself at the disposition of the powers concerned; and if their representatives should find it desirable to meet in Washington, he would be happy to welcome them there and to facilitate their labors in every possible way.

I have, etc.,

HENRY WHITE.

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 213.]

FOREIGN OFFICE, *December 27, 1902.*

SIR: The United States chargé de affaires handed to me to-day the accompanying note,\* embodying the instructions which he had received from the United States Government in regard to the Venezuelan question.

Mr. White informed me that he was also instructed to inquire whether, as the Venezuelan Government had accepted the principle of arbitration by The Hague Tribunal, the President was at liberty to communicate to that Government the conditions embodied in my memorandum of the 23d instant.

I told Mr. White that there could be no objection to the communication proposed by the President. I expressed the regret with which I had learnt that the President had found himself unable to undertake the office of arbitrator, and I took note of his considerate offer to hold himself at the disposition of the powers concerned, in the event of his assistance being required in arranging the preliminaries of a reference to arbitration. I added, however, that it seemed to me that, for the moment, there was nothing more to be done until we knew whether our terms were acceptable to the Venezuelan Government.

I am, etc.,

LANSDOWNE.

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*The Marquess of Lansdowne to Sir F. Lascelles.*

No. 214.]

FOREIGN OFFICE, *December 30, 1903.*

SIR: Count Metternich communicated to me this afternoon the reply received by the German Government from the United States ambassador at Berlin to their request that the President would undertake the office of arbitrator in the Venezuelan difficulty.

This reply is in terms similar to those employed in the note addressed to me by Mr. White on the 27th instant.

Count Metternich, in communicating this answer, stated that, in the opinion of the German Government, it was essential that Venezuela should agree to the conditions formulated by the two powers before they could submit the matter to arbitration at The Hague.

I am, etc.,

LANSDOWNE.

*Mr. White to the Marquess of Lansdowne—(Received January 1).*

No. 215.] AMERICAN EMBASSY, *London, January 1, 1903.*

MY LORD: I have the honor, in accordance with instructions from my Government, to communicate to your lordship the following copy of a telegram, which was received yesterday by Mr. Secretary Hay from Mr. Bowen, American minister to Venezuela:

I have received the following answer from the President of Venezuela:

"I recognize, in principle, the claims which the allied powers have presented to Venezuela. They would already have been settled if it had not been that the civil war required all the attention and all the resources of the Government. To-day the Government bows to superior force, and desires to send Mr. Bowen to Washington at once, to confer there with the representatives of the powers that have claims against Venezuela, in order to arrange either an immediate settlement of all the claims, or the preliminaries for a reference to the tribunal of The Hague, or to an American Republic, to be selected by the allied powers and by the Government of Venezuela. Mr. Bowen would be duly authorized to settle the whole question as the representative of Venezuela.

CIPRIANO CASTRO."

Copies of the foregoing telegram from Mr. Bowen have also been transmitted by the Secretary of State to the American ambassadors at Berlin and Rome.

I have, etc.,

HENRY WHITE.

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*The Marquess of Lansdowne to Sir M. Herbert.*

No. 216.] FOREIGN OFFICE, *January 1, 1903.*

SIR: The United States chargé d'affaires handed to me to-day the inclosed note<sup>a</sup> containing the reply of the Venezuelan Government to the communication embodied in the memorandum handed to me by Mr. White on the 23d December in regard to the settlement of the Venezuelan dispute.

Mr. White informed me that the alternative suggestion made by the President of the Venezuelan Republic, to the effect that an American power might be chosen to arbitrate, was not supported by the United States Government.

Mr. White was further instructed to say that the designation of Mr. Bowen to act as representative of Venezuela was not due to the suggestion or wish of the United States Government. If the powers declined to accept him the United States would so inform Venezuela, and would not authorize Mr. Bowen to serve.

Mr. Bowen's selection was, the United States Government thought, apparently made "in the interest of prompt and favorable action."

I am, etc.,

LANSDOWNE.



*Mr. Haggard to the Marquess of Lansdowne—(Received January 2, 1903.)*

No. 217.]

TRINIDAD, *December 14, 1902.*

MY LORD: I have the honor to transmit to your lordship a copy of the note which I presented to the Venezuelan minister for foreign affairs on the 7th instant in accordance with your lordship's telegram of the 2d instant, as the ultimatum of His Majesty's Government. The note of the German chargé d'affaires was presented at the same time. I also inclose copies of the notes which I addressed to Señor Baralt and to the United States minister on the 8th instant, informing them of my intended departure from Caracas. On the 9th instant I received from the minister for foreign affairs the reply of the Venezuelan Government to the ultimatum. I have the honor to transmit a translation herewith.

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure 1.]

*Mr. Haggard to Señor Baralt.*

CARACAS, *December 7, 1902.*

M. LE MINISTRE: In reply to your excellency's note of the 14th ultimo, I have the honor to inform you that I have been instructed by His Majesty's Government to point out to the Venezuelan Government in writing that, with regard to the steamship *Ban Righ*, His Majesty's Government have given full explanations, and have shown that on this account there is no legitimate ground of complaint. Nor do His Majesty's Government consider that there is any justification for attributing blame to the authorities at Trinidad, who only acted in accordance with instructions.

I have the honor to state, further, that His Majesty's Government also regret the situation which has arisen, but that they can not accept your excellency's note as in any degree a sufficient answer to my communications or as indicating an intention on the part of the Venezuelan Government to meet the claims which His Majesty's Government have put forward and which must be understood to include all well-founded claims which have arisen in consequence of the late civil war and previous civil wars, and of the maltreatment or false imprisonment of British subjects, and also a settlement of the external debt.

I am to request the Venezuelan Government to make a declaration that they recognize in principle the justice of these claims, that they will at once pay compensation in the shipping cases, and in the above-mentioned cases and in those where British subjects have been falsely imprisoned or maltreated, and that in respect of other claims they will be prepared to accept the decisions of a mixed commission with regard to the amount, and the security for payment to be given.

I am further to express the hope that the Venezuelan Government will comply with these demands, and not compel His Majesty's Government to take steps to obtain satisfaction.

I am to add that His Majesty's Government have been informed of the claims of the German Government against Venezuela, that the two Governments have agreed to act together in order to obtain a settlement of all their claims, and that His Majesty's Government will require the immediate payment of a sum equal

to that which may, in the first instance, be paid to the German Government. Any balance after the discharge of pressing claims will be held on account for the liquidation of the claims which will go before the commission.

I am further instructed by His Majesty's Government to make it clear that this communication must be regarded in the light of an ultimatum.

I avail, etc.,

W. H. D. HAGGARD.

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[Inclosure 2.]

*Mr. Haggard to Mr. Bowen.*

CARACAS, December 8, 1902.

SIR: His Majesty's Government have informed me that your excellency was directed by the United States Government to undertake the charge of British interests in Venezuela in the event of that necessity arising.

I have, therefore, the honor to inform your excellency that I am leaving Caracas temporarily, and to request you to be good enough to take charge of British interests during my absence.

The Venezuelan Government have been informed that British interests have been placed under your excellency's charge.

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure 3.]

*Mr. Haggard to Señor Baralt.*

CARACAS, December 8, 1902.

M. LE MINISTRE: I have the honor to inform your excellency that I am leaving Caracas for La Guaira, where I shall, for the present, take up my residence on board His Majesty's ship *Retribution*.

British interests have been placed in the charge of the United States minister during my absence.

I avail, etc.,

W. H. D. HAGGARD.

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[Inclosure 4.—Translation.]

*Señor Baralt to Mr. Haggard.*

CARACAS, December 9, 1902.

M. LE MINISTRE: On Sunday, the 7th instant, a person with whom I have not the honor of being officially acquainted asked for me in my private house, in order to deliver to me in your excellency's name the note of the same date with reference to the claims of British subjects arising from the last civil war and from former ones. A feeling of exaggerated courtesy on my part induced me to receive the note on that day and under those circumstances.

As this ministry has been carrying on a lengthy correspondence with His Majesty's legation on the subject of the complaints which Venezuela had presented, as the occasion arose, to the Government of Great Britain with reference to the injuries caused by the *Ban Righ*, and to the partial conduct of the authorities of Trinidad in respect to the revolution which has just been devastating the Republic, your excellency begins by referring to one of my notes, which you quote as being of the 14th instant, and which was doubtless that of the 14th

ultimo. With reference to this note your excellency states that the Government of His Majesty could not admit that there is any foundation for the demands of Venezuela, since the acts of the *Ban Righ*, as you add, had been fully explained, and the authorities of Trinidad had, moreover, not acted otherwise than in accordance with their instructions. Your excellency then enters into the question of the British claims and asks, in the name of your Government, that Venezuela should declare that they are just in principle; and you finally allude to the necessity of paying them, and to the common action which the United Kingdom and the German Empire have agreed to exercise in order to compel the Republic to do so.

The Government have considered this note with the attention which it deserves without having found in the narration of the facts which it contains anything to justify the present attitude or any sufficient reason for the omission of reciprocal understanding with a view to avoiding or preventing difficulties. The Government of the Republic will begin by reminding you that the essential object of the note of the 14th November, which is that to which your excellency doubtless refers, was to insure an immediate agreement with Great Britain with reference to the pending questions; hence the surprise with which it has seen apparently eluded or unnoticed, the cordial and friendly sentiments which had been so recently expressed. With reference to the *Ban Righ*, no action has been taken to alleviate the tremendous injuries which it caused to the Republic, and with reference to the conduct observed by the authorities of Trinidad, far from offering compensation, it appears that they obeyed definite instructions from the English Government. This circumstance does not require any further comment, since it is enough in itself to give the fullest justification to all the demands which Venezuela has made in the correspondence with the legation up to the 14th November, 1902.

With reference, furthermore, to the essential part of your excellency's note, or its real object, which can only be, as must be deduced from its text, to secure the interests of British subjects, every facility is furnished for the fulfillment of this object without the Government going beyond, as it can not go beyond, their administrative functions in order to harmonize the condition of affairs with the desire expressed in the name of Great Britain. There is no reason why the Federal Government should not recognize the justice of obligations which are provided for in the national laws, and on this point you may be perfectly sure that the interests in question will be always protected and duly attended to.

With reference to the claims, your excellency would seem to refer definitely to those which you enumerated in a note of the 20th February, 1902, amounting, in your opinion, to 36,401 bolivars. The examining commission created with the agreement of the national legislative body will take them into consideration and will settle them in accordance with justice. The remaining cases, which are not answered in the correspondence, depend, as far as they can be considered as constituting claims, on facts which have to be proved or defined, and which the competent authorities will attend to or are attending to. And since your excellency speaks of well-founded claims, it does not appear possible that such cases, in their actual condition or legal position, can have the same character as those which are explained in documents which testify to their character, and which give an opportunity of enlightening the judgment or guiding the decision of the body who will consider them. The Government, however much they may consider and investigate it, can find nothing else included in the present request or demand of Great Britain, since the so-called external debt, which is cited incidentally in the note, ought not to be, and never has been, a subject for action outside the national law of public credit, in which it takes its place with all its guarantees and all the effects which it enjoys by regulation.

The war which has been ruining Venezuela for a year has left the public treasury little less than exhausted and prevented the administration from attending, for the moment, to serious calls of national credit. So long as the work of pacification—near to its end though it be—is not completed the difficulty exists. When once peace is declared, as it shortly will be, it will not be necessary to remind the Government of the Republic of the fulfillment of its fiscal duties, since it well knows its duty in this respect without the necessity of pressure or of spur, contrary, as your excellency will understand, to the laws of mutual respect and of true cordiality.

Accept, etc.,

R. LÓPEZ BARALT.

*Sir M. H. Herbert to the Marquess of Lansdowne—(Received January 2, 1903).*

No. 218.]

WASHINGTON, December 19, 1902.

MY LORD: I have the honor to acknowledge the receipt of your lordship's telegrams of the 11th and 12th December, instructing me to express to the United States Government the thanks of His Majesty's Government for the action of the United States minister at Caracas in protecting British interests in Venezuela, and expressing the conviction that he would continue to exert his influence in the same direction.

On receipt of each telegram I immediately addressed a note to the Secretary of State of the United States in the sense indicated by your lordship, and I have now been informed by Mr. Hay that a copy of each of my communications has been forwarded to Mr. Bowen.

I have, etc.,

MICHAEL H. HERBERT.

[Extract.]

*The Marquess of Lansdowne to Sir F. Lascelles.*

No. 219.]

FOREIGN OFFICE, January 2, 1903.

SIR: The German ambassador called on me this afternoon for the purpose of discussing the answer received from the President of the Venezuelan Republic by the United States Government, and by them transmitted to the British and German governments, with regard to the mode of settling the Venezuelan dispute.

Count Metternich observed that in the Venezuelan reply it was not stated with sufficient distinctness whether the conditions proposed by the two powers were unreservedly accepted. He said that in the view of the German Government it would be necessary to obtain in the first instance from the Venezuelan Government a positive declaration of their acceptance of the conditions upon which the German and British governments had insisted, and that they should be required to explain the manner in which they intended to guarantee the ful-

ment of any obligations which they might contract in connection with the arbitrator's award.

It seemed to the German Government that if satisfactory assurances are given in this respect, the powers concerned would then be in a position "to enter into a discussion with regard to the manner in which the question should be further dealt with."

I said that I held strongly—and in this I agreed with the view of the German Government, which his excellency had been good enough to communicate to me—that we ought on no account to allow our representatives at Washington or elsewhere to enter into any discussions with Mr. Bowen until we had obtained from the Venezuelan Government a distinct statement that they unreservedly accepted and agreed to be bound by the conditions numbered 1, 2, and 3 in the memorandum which I communicated to Mr. White on the 23d December, 1902, and also by the further condition described in the paragraph which follows. An extract of the memorandum, showing the passages referred to, is inclosed for convenience of reference.

If these conditions were unreservedly accepted, I thought we might authorize our representative at Washington to meet Mr. Bowen, and to consider any proposals which he might have to make either for (a) "an immediate settlement of all the claims," or (b) the preliminaries for a reference to The Hague Tribunal.

It should, I thought, be made clear that our readiness to discuss (a) should in no way prejudice our right to demand a reference to The Hague.

It would in this case, I thought, have to be clearly understood that Mr. Bowen appeared merely as a commissioner on the part of the Venezuelan Government, and not in his official capacity as United States minister at Caracas.

I added that it would, in my opinion, be unwise to exclude any arrangement which might possibly afford the prospect of a more expeditious settlement than any which could be expected from The Hague Tribunal.

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[Inclosure.]

*Extract from Memorandum communicated to Mr. White December 23, 1902.*

1. The claims (small, as has already been pointed out, in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews, and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration.

2. In cases where the claim is for injury to or wrongful seizure of property the questions which the arbitrators will have to decide will only be (a) whether the injury took place, and whether the seizure was wrongful; and (b) if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

3. In the case of claims other than the above, we are ready to accept arbitration without any reserve.

It would, in the opinion of both Governments, be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government, and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

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*The Marquess of Lansdowne to Sir R. Rodd.*

No. 220.]

FOREIGN OFFICE, *January 2, 1903.*

SIR: The Italian ambassador called upon me this evening and had some conversation on the subject of the Venezuelan dispute. I repeated to him in substance the observations which I had just made to the German ambassador, and which were fully recorded in my dispatch of to-day addressed to Sir F. Lascelles.

I am, etc.,

LANSDOWNE.

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*The Marquess of Lansdowne to Sir F. Lascelles.*

No. 221.]

FOREIGN OFFICE, *January 3, 1903.*

SIR: The German ambassador handed to me this afternoon the inclosed copy of the reply which his Government will make to President Castho's communication.

I am, etc.,

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[Inclosure.—Translation.]

*Draft of letter to the American ambassador at Berlin.*

The German Government has learnt with satisfaction that the Venezuelan Government accepts in principle the German demands. Before entering into further negotiations with Venezuela on this basis, it appears necessary that President Castro should give a definite declaration that he accepts, unconditionally, the reservations contained in the German memorandum of the 22d December, 1902, besides which he must specially make clear in what manner he intends to pay the demands contained in that memorandum or to give security for the amount.

When the Venezuelan Government has given a satisfactory declaration, the Imperial Government would be ready to instruct their ambassador at Washington to begin negotiations with Mr. Bowen, and to consider his proposals for the settlement of the matter. These proposals would, apart from the demands specified under (1) of the memorandum, cover either an immediate regulation of all the claims or their reference to The Hague Tribunal. The German Government assumes that, if any proposals for immediate settlement are discussed, their rights as to referring the matter to The Hague Tribunal will in no way be prejudiced thereby.

The Imperial Government would be very grateful to the Government of the United States if the latter would transmit this reply to President Castro.



*The Marquess of Lansdowne to Mr. White.*

p. 222.]

FOREIGN OFFICE, *January 5, 1903.*

SIR: I have the honor to inform you, in reply to your communication of the 1st instant, that His Majesty's Government have taken to consideration the answer received by Mr. Secretary Hay from the President of the Venezuelan Republic to the proposals contained in the memorandum which, on behalf of His Majesty's Government, I handed to you on the 23d December, 1902.

His Majesty's Government observe with satisfaction President Castro's statement that he recognizes "in principle" the claims which they have put forward. His Majesty's Government understand this statement to signify that President Castro agrees, on the part of the Venezuelan Government, that any discussions in which Mr. Bowen, as the representative of that Government, is to engage at Washington with the representative of His Majesty's Government are to proceed upon the assumption that the Venezuelan Government unreservedly accept, and agree to be bound by the conditions laid down in the memorandum of the 23d December, 1902, which run as follows:

1. The claims (small, as has already been pointed out, in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews, and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration.

2. In cases where the claim is for injury to, or wrongful seizure of, property, the questions which the arbitrators will have to decide will only be (a) whether the injury took place, and whether the seizure was wrongful; and (b) if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

3. In the case of claims other than the above, we are ready to accept arbitration without any reserve.

It would, in the opinion of both Governments [British and German], be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government, and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

On receiving a definite assurance from President Castro that this interpretation of his language is accepted by him as correct, and that whatever procedure be adopted adequate provision will be made for the prompt satisfaction of the claims specified in paragraph (1), His Majesty's Government will be prepared to authorize His Majesty's ambassador at Washington to confer on this basis with Mr. Bowen, as the representative of the Venezuelan Government, and will furnish Sir M. Herbert with the necessary instructions for examining the possibility of an immediate settlement, or, failing such a settlement, for arranging a reference of all points left open for arbitration to the tribunal at The Hague.

His Majesty's Government will be much obliged if Mr. Secretary Hay will be good enough to take such steps as may be necessary to communicate the substance of this memorandum to President Castro, and will request an answer at the President's earliest convenience.

I have, etc.,

LANDSLOWNE

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*The Marquess of Lansdowne to Sir F. Lascelles.*

No. 223.]

FOREIGN OFFICE, January 5, 1903.

SIR: I handed to the German ambassador to-day a copy of the reply of His Majesty's Government to the proposals of the Venezuelan Government received on the 1st instant through the Government of the United States.

I am, etc.,

LANDSLOWNE

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*The Marquess of Lansdowne to Sir R. Rodd.*

No. 224.]

FOREIGN OFFICE, January 5, 1903.

SIR: The Italian chargé d'affaires called upon me to-day and informed me that he was instructed by the Italian Government to say that they entirely concurred in the views which I had expressed to M. Pansa on the 2d instant as to the reply which should be given to the proposals of the Venezuelan Government received on the 1st of January through the Government of the United States.

The Italian Government saw no objection to the employment of Mr. Bowen, on the understanding that he was to act not as an arbitrator but as the agent of the Venezuelan Republic, and that in the event of his being unsuccessful in arriving at an immediate settlement with the representatives of the powers concerned, they should be free to have recourse to the arbitration tribunal at The Hague.

I subsequently sent to Signor Carignani a copy of my note to the United States chargé d'affaires.

I am, etc.,

LANDSLOWNE

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*The Marquess of Lansdowne to Sir R. Rodd.*

No. 225.]

FOREIGN OFFICE, January 7, 1903.

SIR: The Italian chargé d'affaires informed me to-day that the Italian Government had returned an answer identic in substance with that of His Majesty's Government to the Venezuelan proposal that Mr. Bowen should visit Washington for the purpose of discussing with the representatives of the powers concerned the possibility of an immediate settlement of the matters in dispute between Vene-

zuela and those powers, or the preliminaries of an appeal to the tribunal at The Hague.

M. Carignani explained to me that the Italian claims differed in some respects from ours, and that the Italian Government had asked that their claims should receive a treatment "analogous" to that given to British claims of similar description.

I am, etc.,

LANSDOWNE.

*Sir M. Herbert to the Marquess of Lansdowne—(Received January 8, 1903).*

No. 226.]

WASHINGTON, *December 28, 1902.*

MY LORD: With reference to my dispatch of the 19th instant, I have the honor to transmit to your lordship herewith copy of a note, with its inclosures, which I have received from the Secretary of State of the United States relative to the action of the United States minister at Caracas in taking charge of British interests in Venezuela.

I have, etc.,

MICHAEL H. HERBERT.

[Inclosure 1.]

*Mr. Hay to Sir M. Herbert.*

DEPARTMENT OF STATE,

*Washington, December 26, 1902.*

EXCELLENCY: I have the honor, for your information, to inclose copy of a part of a dispatch from the minister of the United States at Caracas, reporting that he has taken charge of the interests of His Britannic Majesty's Government in Venezuela.

I have, etc.,

JOHN HAY.

[Inclosure 2.]

*Mr. Bowen to Mr. Hay.*

LEGATION OF THE UNITED STATES,

CARACAS, VENEZUELA, *December 13, 1902.*

SIR: I have the honor to inclose herewith copies of the letters I received and sent in regard to the matter of taking charge of the British and German legations.

I am, etc.,

HERBERT W. BOWEN.

[Inclosure 3.]

*Mr. Haggard to Mr. Bowen, December 8, 1902.*

(See Inclosure 2 in No. 217.)

[Inclosure 4.]

*Mr. Bowen to Señor Baralt.*

LEGATION OF THE UNITED STATES,  
*Caracas, Venezuela, December 8, 1902.*

MR. MINISTER: I have the honor to inform you that the British minister, Mr. Haggard, has left Caracas temporarily, and that he has asked me to take charge of British interests here during his absence. My Government has instructed me to comply with his request, after obtaining the consent of your excellency's Government.

I therefore respectfully request that the Venezuelan Government grant me permission to take charge temporarily of British interests here.

I gladly avail, etc.,

HERBERT W. BOWEN.

[Inclosure 5.—Translation.]

*Señor Baralt to Mr. Bowen.*

MINISTRY OF FOREIGN AFFAIRS OF THE UNITED STATES OF VENEZUELA,  
*Caracas, December 9, 1902.*

MR. MINISTER: Your excellency's note, which I received to-day, was a confirmation of a notice given to me yesterday by his excellency, Mr. Haggard, minister resident of His Britannic Majesty, to the effect that he was going temporarily on board one of His Majesty's men-of-war anchored in the harbor of La Guaira, and had left your excellency in the meanwhile in charge of British interests. Your excellency requests permission of the Venezuelan Government to represent said interests—a request which the chief of the Government grants with the greatest pleasure to the minister of a nation so friendly to Venezuela, and also as said representation will only be temporary, the only case where double representation is admitted.

I renew, etc.,

R. LOPEZ BARALT.

[Telegram.]

*Sir R. Rodd to the Marquess of Lansdowne—(Received January 8).*

No. 227.]

ROME, January 8, 1903.

With reference to my telegram of the 7th instant:

No special reserves were contained in the Italian reply, but in the event of the character of the cases, respecting which the other powers had made reserves, proving to be analogous to that of any of the cases put forward by Italy, she would, in respect to these cases, claim similar treatment.

*Mr. White to the Marquess of Lansdowne—(Received January 9).*

No. 228.]

AMERICAN EMBASSY, London, January 9, 1903.

MY LORD: I have the honor, in accordance with instructions from my Government, to communicate to your lordship the copy of a tele-

gram which was received yesterday morning by Mr. Secretary Hay from Mr. Bowen, the American minister at Caracas:

I have just received the following from President Castro:

"MR. MINISTER: The Venezuelan Government accepts the conditions of Great Britain and Germany, and requests you to go immediately to Washington for the purpose of conferring there with the diplomatic representatives of Great Britain, Germany, and with the diplomatic representatives of the other nations that have claims against Venezuela, and to arrange either an immediate settlement of said claims, or the preliminaries for submitting them to arbitration.

"CIPRIANO CASTRO,  
"Constitutional President."

[Confidential.]

If, as I understand, Great Britain and Germany want to know what guaranty they will have, please inform them that it will be the custom-houses; consequently, I beg that the blockade be raised at once.

BOWEN.

I am instructed, furthermore, to inform your lordship that Mr. Bowen will proceed to Washington immediately.

I have, etc.,

HENRY WHITE.

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*The Marquess of Lansdowne to Mr. White.*

No. 229.]

FOREIGN OFFICE, *January 9, 1903.*

SIR: I have the honor to acknowledge the receipt of your note of to-day's date, in which you are so good as to communicate to me, in accordance with the instructions of your Government, copy of a telegram received yesterday by Mr. Secretary Hay from Mr. Bowen, the United States minister at Caracas, intimating that the Venezuelan Government accept the conditions proposed by Great Britain and Germany, and suggesting that Mr. Bowen should at once proceed to Washington to discuss the questions at issue with the representatives of the powers at Washington. You add that Mr. Bowen will proceed to Washington immediately.

This communication will receive prompt attention.

I have, etc.,

LANSDOWNE.

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*Admiralty to Foreign Office—(Received January 14).*

No. 230]

ADMIRALTY, *January 8, 1903.*

SIR: With reference to previous correspondence, I am commanded by my lords commissioners of the Admiralty to transmit herewith, for the information of the Secretary of State, a letter dated the 19th ultimo, from the commander in chief on the North America and West Indies station, together with its inclosures, relative to the seizure of Venezuelan gunboats, etc.

2. It is requested that the commander in chief's letter and its inclosures may be returned when done with.

I am, etc.,

C. I. THOMAS.

[Inclosure 1.—Extract.]

*Vice-Admiral Sir A. Douglas to Admiralty.*

ARIADNE, AT TRINIDAD, December 19, 1902.

Be pleased to inform the lords commissioners of the Admiralty that I arrived at Port of Spain, Trinidad, on the 10th instant, and found the state of affairs with regard to the Venezuelan difficulty to be as follows:

2. The time allowed for a reply from the Government of Venezuela to the joint ultimatum expired at 3 p. m. on the 9th instant, and none having been received, the British minister and staff had come down from Caracas to La Guaira and embarked on board His Majesty's ship *Retribution*.

3. On the 9th December Commodore Montgomerie dispatched the *Fantomc* to Barrancas, in the Orinoco, with orders to capture any Venezuelan Government vessels met with and to insure the river being kept open for trade. He was to warn the officer in command of the fort at Castillos not to interfere with vessels passing the fort, and that if he did so Commander Hibbert would take immediate steps to prevent him, if necessary shelling the fort.

4. At the same time the *Quail* was sent from Trinidad to La Guaira to obtain information, and the *Indefatigable* to the same place, to relieve *Retribution*.

5. On the evening of the 9th December the *Charybdis* and *Alert* seized, without any opposition, the Venezuelan gunboat *Bolivar* in Port of Spain, Trinidad. The officers were, at their own request, landed here and the men sent over to the mainland. -Next day she proceeded to sea with a prize crew to search for Venezuelan Government vessels off the mouth of the Pedernales River. The *Alert*, on a similar mission, left Trinidad for the Gulf of Paria.

6. The *Zamora* and the *Veinte Tres de Mayo* were captured without resistance by the *Alert*, on the 11th December, and sent into Port of Spain.

7. The German ships captured without resistance the *Restaurador*, *Crespo*, and *Totumo*.

8. The proceedings of His Majesty's ship *Retribution* are detailed in Captain Lyon's report of the 12th instant, attached. The steps taken to capture the *Ossun* and to disable the *Margarita*, appear to have been satisfactory and well carried out, as were also those taken with the object of bringing off the members of the harbor corporation.

9. I also forward herewith Commodore Montgomerie's report of his operations at Puerto Cabello.

10. The *Alert* has siezed without opposition and sent into Port of Spain the Government schooner *Coquette* and the cutter *Britania* (guarda costa), and these captures complete the whole list of the Venezuelan fleet, with the exception of the *Miranda*, the whereabouts of which is not known. I append a list of prizes taken.

11. Upon receipt of the news of the capture of his vessels, President Castro arrested and imprisoned several English and German inhabitants of Caracas, but he subsequently released them all, and, apparently with the object of stifling the remains of the revolutionary movement by an appeal to the patriotism of the country, he called upon all Venezuelans to unite in repelling the allies, which, however, has not met with much response; in fact, it was stated to me on apparently reliable authority that not only had General Matos, the revolu-



tionary leader, landed again in Venezuela, but that one of his armies, numbering from 3,000 to 6,000 men, and large enough to deal with any force the President could bring against it, is now in the vicinity of Caracas. If this be true, it is not probable that our action will have any real effect in the direction of reconciling the two contending parties.

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[Inclosure 2.—Extract.]

*Commander Eustace to Senior Naval Officer, Trinidad.*

ALERT, AT GUIRIA, *December 11, 1902.*

I have the honor to inform you that, in compliance with orders received from Commodore R. A. J. Montgomerie, I left Trinidad at 4 a. m. on the 10th December, and proceeded at full speed toward Guiria. At 7 a. m. I observed the Venezuelan cruiser *Zamora* endeavoring to escape to the northeast, but on finding that my speed was superior to his own he returned to Guiria and anchored, where, on receipt of your formal demand, he surrendered at 9 a. m.

2. No resistance was offered by officers or crew, and, with the exception of some of the engine complement, who volunteered to work their passage to Trinidad, they were all landed at Guiria.

3. At 11.40 a. m., having landed the crews of the *Bolívar* and *Zamora*, I proceeded with the *Zamora* toward Irapa, and met the *23 de Mayo* cruising in the gulf near Irapa.

4. On receipt of your demand the *23 de Mayo* surrendered at 2.45 p. m.

5. The crew and soldiers were landed at Guiria, as I was unable to approach Yaguaraparo, where General Velutini's headquarters now are.

6. Both the above vessels stated that the *Restaurador* was hourly expected at Guiria; also, that the *Zumbador*, being short of coal, must ere long return to Trinidad to obtain coal.

7. At 3.30 p. m., on the 10th December, I ordered the *Zamora* and *23 de Mayo*, with prize crews, under the orders of Lieut. H. W. Parker, to join you at Trinidad.

8. At 6 a. m., on the 11th December, the Venezuelan gunboat *Zumbador* was sighted to the southward of Guiria, and, on receipt of your demand, surrendered at 7 a. m. Her officers and crew were landed at Guiria.

9. At 10.30 a. m. I sent her in charge of a prize crew, under the orders of Lieut. E. A. D. Masterson, to join you at Trinidad.

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[Inclosure 3.—Extract.]

*Captain Lyon to Vice-Admiral Sir A. Douglas.*

RETRIBUTION, AT TRINIDAD,

*December 12, 1902.*

I have the honor to inform you that, on my arrival at La Guaira on the 6th December, I received a letter from Capt. W. J. Grogan, His Majesty's ship *Indefatigable*, stating that he was in Caracas with the British minister and that he was coming down by the 3 p. m. train. I called upon Commodore Scheder, and he informed me that the joint ultimata would be presented at 3 p. m. on Sunday, the 7th December, that twenty-four hours after, if it was not accepted, the British minister and German chargé d'affaires would come down

and embark on board; that another twenty-four hours' grace would be given, and that he had orders to act at 3 p. m. on Tuesday, the 9th December. I informed him that I should proceed to Caracas to see the British minister and return the following day (Sunday). Commodore Scheder returned my call at 2 p. m.

2. I proceeded to Caracas by the 3 p. m. train and met Captain Grogan at Zig-Zag, half way, and he informed me that he had cabled to Commodore Montgomerie to come direct to La Guayra, as the German commodore had orders to act at 3 p. m. on Tuesday. As the trains only waited two or three minutes while crossing, he told me that he would give me full particulars the next day, and that the British minister would inform me of everything that was going on.

3. The German ships *Panther* and *Falke* arrived on the 8th December.

4. On the 8th I visited the German commodore. We then arranged to hold a conference the next morning to evolve a plan for cutting out the Venezuelan ships then in the harbor.

5. At 4 p. m. that day I landed to inform His Majesty's vice-consul at La Guaira, Mr. Rudolf Schunk, that his excellency the British minister at Caracas had left that town. Two cutters, under Lieut. Colin A. M. Sarel, met the train, and conveyed his excellency's luggage to the ship, and I brought off his excellency, Mr. A. C. Grant Duff, secretary of legation, and Mr. Godfrey Haggard, private secretary, in my galley.

6. That night the *Falke* and *Gazelle* were ordered to sea to patrol the coast and to prevent any vessels escaping, and, if necessary, hold them until they were informed of the final answer to the ultimata.

7. At 10 a. m. on the 9th I went on board the *Vineta*, accompanied by Lieut. Archibald Deas. The commodore and myself agreed that the *Vineta* should take the *General Oresco*, the *Panther*, the *Totumo*, and that the *Retribution* should utterly disable the destroyer *Margarita*, which was inside the camber hauled up for repairs and totally unseaworthy, and capture the *Ossun*, a vessel hired from the French Railway Company by the Venezuelan Government, and that the boats would start at 4.45 p. m., covered by the *Panther*, which was to get under way for that purpose. At 3 p. m., as there was no answer, I telegraphed to Commodore Montgomerie that the ultimata were rejected, and that we were going to act at 4.45 p. m.

8. At 4.15 the boats were manned and armed on the side of the ship nearest the sea, and placed under the command of Lieut. Cecil E. Rooke, and at 4.45 the divisions from the several ships were towed into the harbor, and effected their purpose without any opposition; in fact, it was a most complete surprise.

The *Retribution* was cleared for action, and her guns, loaded with common shell, trained on the several forts. I wish to bring to your notice the very able manner in which Lieut. Cecil E. Rooke, Lieut. Archibald Deas, and Sublieut. Leveson G. B. A. Campbell carried out my orders. All ranks behaved admirably, and the engine-room party were most expeditious in removing the machinery from the *Margarita*, from which also a dynamite gun and pompom were brought off.

The *Ossun* I made fast astern. I may mention here that on the 10th I received a note from the French minister, drawing my attention to the fact that the *Ossun* belonged to a French company. I replied that, if he would give me a guarantee that she should not be used by the Venezuelan Government until after the dispute between the British and German Governments on the one part and the Venezuelan Government on the other part was settled, I would at once surrender her to him. I informed Captain Grogan of this before leaving.

9. I then arranged a code of signals with the harbor corporation officials in

of danger threatening the British subjects, having already offered to take them on board if they wished, moved the ship farther out, and anchored.

At about 11 p. m. Commodore Scheder sent word to me that he was landing his men to bring off the German consul, who had made a signal of distress. I immediately manned and armed boats, went on board, and placed my men at his disposal. He thanked me and said he did not think it would be necessary for me to land, so I sent them back to the ship.

10. I remained on board the *Vineta* until their landing party returned with the consul. While on board her, I received a note from Mr. Prince, the manager of the harbor corporation board, stating that he had received information, and the British vice-consul had confirmed it, to the effect that President Castro had ordered all the British and German subjects in Caracas to be arrested, and that he would not allow the United States minister to look after them. The German consul also informed me that all the British and Germans in La Guaira would be arrested at 5 a. m. (this was 2.30 a. m.) and that a large force of soldiers was being sent over the hills to La Guaira.

I returned to my ship shortly after, informed his excellency, and decided to send an armed party to bring off all the British subjects who would come. His excellency also sent an urgent letter to Mr. Prince, informing him that he ought to come off, and that it was causing me much anxiety, and would give me a freedom to act if necessary. At 4.30 I sent Lieutenant Deas in command of the party, consisting of 7 officers, 66 armed and 5 unarmed men in the steam pinnace, first and second cutters, with orders to deliver the letter to Mr. Prince and bring off the vice-consul and any British who wished to come. Lieutenant Deas successfully carried out my instructions, bringing off everyone except the harbor corporation officials, who would not come.

During the time Lieutenant Deas was on shore the boats of the *Vineta* were manned and armed alongside the ship, ready to give any assistance necessary, fortunately their services were not required.

11. The United States steamship *Philadelphia*, being alongside the wharf, the vice-consul offered to go to her and get messages sent to the corporation building, urging them to come on the *Philadelphia*, if possible, where I could safely take a boat.

At 11 a. m. the international code pennant hoisted on board the steamer informed me that a boat was required. I sent in the steamboat under Mr. H. I. Ryon, midshipman and he brought off the vice-consul, who informed me that the corporation officers were besieged, and that he himself would have been prevented from leaving the shore by the Venezuelan police had not Mr. Ryon found him and pulled him into the boat.

I then wrote a letter to the prefect, a copy of which I inclose. Not receiving an answer to this by 9.30 p. m., and the *Quail* having arrived, I determined to send an armed party to bring the officials off.

At 12 p. m. I got underway and anchored as close in as possible, and ordered the *Quail* to anchor close to me. I then went on board the *Vineta* and informed Commodore Scheder. He agreed with me, and offered to assist with two boats and guns. I thankfully accepted his offer, and asked that his boats might cover the landing party and reinforce them if necessary.

I then sent a letter, a copy of which I inclose, to the officer commanding the force, and also a message to say that my attitude was defensive and not aggressive, which was conveyed on shore by the great courtesy of the captain of the Spanish training ship *Nautilus*.

At 3.45 the boats left the ship in company with the Germans at 3.45, Lieutenant Deas in command, the *Quail* being underway to cover them.

I showed Lieutenant-Commander Morant where the Venezuelan troops, who

were in large numbers, were stationed, and gave him orders that, if a single shot was fired at our men, he was to fire with shrapnel and short-range fuse. The ship was cleared for action and guns loaded and trained on the forts.

I have much pleasure in reporting that the expedition was entirely successful, and that all British subjects known to be in La Guaira have left. Lieutenant Deas's dispositions were excellent, and too high praise can not be given to the disposition of the German boats in covering the landing party.

Lieutenant-Commander Morant very ably carried out my instructions, and maneuvered his destroyer very cleverly.

The whole affair was over in about twenty minutes.

I went on board the *Vineta* and thanked the German commodore for his assistance.

12. I then ordered the *Quail* to return to Trinidad. The *Indefatigable* arrived at 6 p. m., when I informed Captain Grogan of the state of affairs and left my prize, the *Ossun*, in his charge, and left La Guaira at 10 p. m.

The railway and harbor corporation buildings are in the hands of the Venezuelan troops.

We ascertained just before leaving that Mr. Almond, the manager of the railway; Mr. Cherry, Venezuelan Central Railway, and Mr. Wallis, manager of the telephone company, of whose arrest we had previously heard, were in the United States minister's house, but of the British consul, Mr. W. A. Andral, nothing is known.

I discharged the vice-consul and Mrs. Schunk, one gentleman and two ladies, to the *Philadelphia* before leaving, and have brought with me his excellency the minister, Mr. W. H. Doveton Haggard, Mr. A. C. Grant Duff, secretary of legation, and Mr. Godfrey Haggard, private secretary, and Mr. H. W. Prince, Mr. H. Fieldwick, and Mr. G. L. Lepage, of the harbor corporation, and Mr. J. Corry.

13. From La Guaira I proceeded to Carenero, and, not finding anything there, to La Guanta, where I found the *Vineta* and *Gazelle*, who had captured the Venezuelan ship *Restaurador* yesterday morning. I called on the commodore, who informed me that the *Gazelle* would call at Carupano the next morning accompanied by her prize.

The *Vineta* was going immediately to La Guayra, and, if there was no news there, would proceed to Puerto Cabello to try to capture the *Miranda*. I then decided to proceed direct to Trinidad, where I have the honor to report my arrival to-day.

14. I inclose herewith copy of my orders to Lieutenant Rooke on taking charge of the cutting-out party, his report on the performance of the same, and Lieutenant Deas's report on the various landing parties under his command; all of which may tend to throw further light on my proceedings during the last few days. On every occasion I warned the officer in command that it was necessary to avoid bloodshed, if possible, and I am happy to be able to report that this was the case. I wish to report, also, that the conduct of the officers and men, during a very critical situation, is worthy of great praise.

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[Inclosure 4.—Translation.]

*Captain Lyon to Señor Leicibabaga.*

RETRIBUTION, December 10, 1902.

SIR: I have heard that an unoffending British subject was violently arrested last night. He fortunately succeeded in escaping from the police who arrested him, and took refuge in the British vice-consulate.

The British vice-consul informs me, moreover, that, after he and his household had retired to rest last night, an attempt was made to entice him from his house, presumably with the intention of arresting him.

There are other Englishmen in La Guayra, notably the gentlemen forming the staff of the harbor corporation.

I have learnt that their house was last evening surrounded by police. If there is any intention of interfering with the liberty of these gentlemen, it is my duty to inform you of the very serious consequences that would follow such an outrage, and, in the event of their having been already arrested before this letter reaches you, I have to demand their immediate release.

It is not necessary for me to remind you that the custom-house, the public buildings, and the forts of La Guayra could be immediately destroyed by my hands.

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[Inclosure 5.]

*Captain Lyon to officer commanding troops, La Guayra.*

RETRIBUTION, December 10, 1903.

SIR: I have the honor to inform you that I am sending in a boat, under the command of the officer who will hand you this letter, to bring off to this ship the gentlemen belonging to the harbor corporation, whom, I am informed, are being improperly detained in their house.

I have the honor to request that you will give the officer in command every facility in your power.

I have, etc.,

H. LYON.

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[Inclosure 6.]

*Memorandum of instructions to Lieutenant Rooke.*

You are to proceed at 4.45 p. m. in command of an expedition from this ship, in conjunction with a force from the German squadron, but each ship acting separately according to orders. You are not to assist each other unless it becomes necessary.

2. The cutting-out party will consist of Lieut. Cecil E. Rooke, in the second cutter with 26 men armed with rifles, the boat keepers with revolvers, Lieut. Schibald Deas, with a torpedo party consisting of Mr. John W. Evans, torpedo boatswain, 1 petty officer, first class, 2 leading torpedo men and 2 crew, 2 mine-room artificers and 4 chief stokers, and Sublieut. Leveson G. B. A. Campbell in the first cutter, with 12 men, 1 leading torpedo man, and 1 seaman torpedo man. The steamboat in charge of Mr. Harry J. Sobey, gunner, and Mr. Herbert I. N. Ryon, midshipman, will tow the boats in the following order: second cutter (astern of steamboat), then whaler, and then first cutter, dropping the first cutter abreast of the *Ossun*.

Then, directly you have finished with the steamboat you are to send her to assist in towing the *Ossun* out to this ship.

3. Lieutenant Deas is to disable the torpedo boat so that it would be impossible to repair her under six months. You are to cover Lieutenant Deas's operations with the 26 men armed with rifles.

4. Expedition is necessary, and you must clearly understand that it is desirable to effect this object without bloodshed, if possible. You must take advantage of any shelter that is obtainable for the men. Silence must be observed on the boats, and strict attention to orders.

5. I leave the manner of carrying out the operations entirely to you, except for the few previous orders, which must be observed.

6. The cutters will be armed with Maxims, 360 rounds of ammunition for the Maxims, and 50 rounds per rifle.

7. The second cutter and whaler will find their own way back to the ship, the first cutter, whose crew will be armed with cutlasses and pistols, covering the towing off of the *Ossun*.

8. The ship will be prepared for action.

H. LYON, *Captain*.

RETRIBUTION, AT LA GUAYRA, *December 9, 1902.*

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[Inclosure 7.]

*Lieutenant Rooke to Captain Lyon.*

RETRIBUTION, AT LA GUAYRA,  
*December 10, 1902.*

SIR: I have the honor to report that in compliance with your orders of the 9th instant I left the ship in command of a party consisting of Mr. H. J. Sobey, acting gunner, and Mr. H. I. N. Lyon, midshipman, in the steam pinnace, manned by 4 seamen and 2 engine-room ratings; Lieut. Archibald Deas, Mr. John W. Evans, boatswain (T), and 11 men, including 6 engine-room ratings in the whaler; Sublieut. Leveson G. B. A. Campbell and 16 men, including 2 engine-room ratings, in the first cutter, and 31 men, including 8 stokers, in the second cutter, of which I was in charge, the boats leaving the ship at 4.45 p. m.

2. When near enough I detached the first cutter, and Sublieutenant Campbell boarded the steamship *Ossun*, which was at anchor about 3 cables from the shore, while I proceeded with the remainder to the entrance of the Camber, in which the destroyer *Margarita* was moored. Lieutenant Deas then boarded her, and the steam pinnace returned to assist Sublieutenant Campbell. I landed with my party on the inner side of the Camber and disposed them in sections of 5 in positions as sheltered as possible which commanded the approaches to the Camber from the town, and which covered Lieutenant Deas's operations, then sending the second cutter to load such parts of the *Margarita's* machinery, etc., as Lieutenant Deas might remove.

3. Sublieutenant Campbell performed his duty in a most efficient manner, parting the *Ossun's* cable by exploding a 2½-pound charge of gun cotton, and getting her in tow of the steam pinnace within ten minutes of the time he boarded her. He reports to me that he sent her crew ashore in their own boat before getting underway. I consider that owing to the *Ossun* being very light in the water and her steering gear being disabled it required great judgment, both on his part and on the part of the officers in the steam pinnace, to tow her out between the shipping to the ship.

4. When I saw that he had no more need of the first cutter—which, according to your orders, was covering the towing off of the *Ossun*—I ordered her to take up a position which would enable her to use her Maxim in support of my left sections, which had had to be extended over a large space owing to the lack of cover.

5. Lieutenant Deas performed his duty very quickly and thoroughly, being ably assisted by Mr. Evans, the engine-room ratings with him removing portions of machinery, while the seamen removed the dynamite gun, pompom, arms, and ammunition. All this gear was loaded in the second cutter and whaler.

When he was ready I ordered him to return to the ship, and, when his boats



were well clear of the Camber, closed my sections in, embarked them in the first cutter, and followed him.

6. The behavior of all ranks and ratings was excellent, and perfect silence was maintained and great alacrity shown during the whole operation. I beg to especially draw your attention to the amount and weight of the machinery moved from the *Margarita* in such an extremely short space of time. This is due to the excellent work performed by John E. Phillips, E. R. A., second class, O. N. 152098; William T. Glanvill, chief stoker, O. N. 143127; Sidney Baker, stoker, O. N. 276995; Frederick A. T. Shattock, stoker, O. N. 293261; John Hurley, stoker O. N. 171329; and Charles E. Coulman, stoker, O. N. 277158.

7. While these operations were in progress, boats from His Imperial German Majesty's ships *Vineta* and *Panther*, covered by the latter, which had got under way for that purpose, had boarded, cut the cables of the Venezuelan ships *General Crespo* and *Totumo*, and towed them out to a position near the *Vineta*.

I have, etc.,

C. E. ROOKE

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[Inclosure 8.]

*Lieutenant Deas to Captain Lyon.*

RETRIBUTION, AT SEA, *December 11, 1902.*

SIR: I have the honor to report that, in accordance with your orders, at 4.30 a. m. on the 10th of December, 1902, I landed in charge of a party of 70 men and officers, to bring off to the ship as many British subjects as wished to come on board for safety. On my arrival at the jetty, I left Lieut. Colin A. M. Sarel, R. N., and Mr. Harry J. Sobey, gunner, R. N., with 50 men, to guard the boats, and proceeded myself with the remainder to the corporation buildings, where I informed the inhabitants of the state of affairs, and told them I would take them on board if they wished. I then proceeded to the British consulate and informed the consul, asking him at the same time to inform me if there were any other British subjects whom I could warn in time. The only others in the town were Mr. A. H. Kell, his wife, and three children, who, together with Mr. J. Schunck, consul, his wife, child, and sister-in-law, I escorted to the boats and brought safely on board, arriving at 6.30 a. m. Before leaving the shore I again visited the corporation buildings, and asked Messrs. H. W. Prince, H. Fieldwick, G. L. Le Sage, and O. Schnell, the latter being a German subject, if they desired to come on board, and was told in reply that they had decided to remain on shore. I therefore left them, as daylight was nearly come in, and armed troops were close round me.

2. I have also the honor to report that, in compliance with your orders, I landed on the 10th December, at 3.40 p. m., in command of a landing party of 74 seamen and stokers and 9 Royal Marine Light Infantry, covered by His Majesty's ship *Quail*, Lieut. and Commander E. R. Morant, R. N., and three boats of His Majesty's ship *Vineta*. I was accompanied by Lieut. Colin A. M. Sarel, R. N., Sublieut. L. G. B. A. Campbell, R. N., Sublieut. John G. B. Harrison, R. N. R., and Mr. Harry J. Sobey, R. N. On landing I took the marines with me, and left Lieut. C. A. M. Sarel in charge of the remainder to cover my movements and protect the boats, with orders to take what cover was possible, as there were a large number of armed troops close round. I proceeded to the corporation house, which I found strongly guarded in front and on each side, but with the rear unprotected; and having taken shelter there, I waited until the armaments were ready, when I withdrew with them to the boats and brought them on board. On landing I was requested by some official to wait until the

governor could be summoned, but taking into consideration the urgency of the case, and noting the evident bad temper of the Venezuelan troops, I decided to act at once.

On both these occasions the conduct and bearing of both officers and men serving under me was very good, and the discipline excellent. Lieut. C. A. M. Sarel, who was in charge of the covering party, disposed them to the best advantage, and materially assisted me in carrying out your orders without any bloodshed. The three boats from His Majesty's ship *Vineta* I requested to cover my landing party from outside the breakwater, and their presence, to a large extent, prevented any trouble taking place. These boats were formed in line abreast, bows on, to my landing party at a distance of about 200 yards, and their Maxim guns and rifles were kept constantly covering my movements.

I have, etc.,

A. DEAS.

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[Inclosure 9.]

*Commodore Montgomerie to Vice-Admiral Sir A. Douglas.*

CHARYBDIS, AT LA GUAIRA, December 15, 1902.

SIR: I have the honor to report that after parting company with your flag at Trinidad, on the 10th instant, I proceeded toward La Guaira, calling at Patos Island en route, and also keeping a lookout for any Venezuelan gunboats or guardacostas.

2. About 3 a. m. on the 12th I met the German cruiser *Vineta* at sea, and, after communicating with her, both ships proceeded to La Guaira.

3. Hearing that the British steamer *Topaze* had been seized and looted at Puerto Cabello, and her officers and crew imprisoned, I left the same evening, in company with the *Vineta*, for that port, arriving next morning.

4. We found the facts to be as stated. The captain and crew had been grossly ill-treated and imprisoned from Tuesday evening to midnight on Wednesday, when they were released. Next day, however, the captain was compelled to haul down his colors.

5. I accordingly sent in a cutter under Lieutenant Rawson, with an armed boat's crew, to bring the *Topaze* out of the harbor as soon as her steam was ready. In the meantime I took up a position so as to sweep the quay with my guns should the soldiers attempt to rush her. However, all passed off quietly and the ship was brought out and anchored.

6. As *Charybdis* and *Vineta* were cleared for action, the authorities on shore apparently got nervous, and the American and two other consuls came off to inquire whether I was going to seize the custom-house.

7. Commodore Scheder was with me at the time, and as the American consul could not come on board, having a damaged hand and being unable to get up the side, we both went down and held a conference in the consul's boat.

8. This was at about 11 a. m.; the authorities apparently knew what the real trouble was, as, during our interview, when I spoke about the outrage committed, Mr. Valkmar, the United States vice-consul, said that they stated that it had been done by the mob and not by the Government.

9. I pointed out that the Government were responsible for an act committed by the mob, as they had the power to stop it, and that if they had been unable to do so they could do no less than apologize, which would be merely ordinary courtesy.

10. I requested the United States consul to inform the authorities that unless

received an apology at once for the insults offered to the British flag and the treatment of the steamer's captain and crew (who had been driven through the streets at the point of the bayonet, some of them nearly naked, having been hauled out of their bunks), as well as an assurance that British and German subjects would not be molested in the future, we would bombard the forts, and that, in the event of their using the three Krupp field guns they had brought down on the beach opposite the ship, we would also demolish the custom-house. The latter we could have done without injury to the town. In this action the German commodore entirely concurred.

11. Soon afterwards I received a note from Mr. Valkmar, in which he stated he hoped to be able shortly to forward the explanations required, and I afterwards had a message from him to say that they had telegraphed to Caracas for instructions, and had got no reply.

12. Receiving no answer to our demand, Commodore Scheder and I sent a joint letter to say that unless a reply was received by 5 p. m. we would demolish the forts, and also, should any firing take place from the town, the custom-house, so warning them to remove the garrison and prisoners from the forts.

13. No answer being received to this letter, *Charybdis* and *Vineta* took up their stations for bombarding. I arranged with Commodore Scheder that, on hauling down a prearranged signal, both ships should open fire, *Charybdis* port battery on Fort Libertador and starboard on Fort Vigia, *Vineta* on fort Vigia.

14. At 5.07 p. m. signal was hauled down and bombardment commenced. Fort Libertador replied by rifle fire but not by gun, and I subsequently found they had all their guns on the wrong side of the fort, so as to be a menace to the town, and presumably had not time to shift them round.

15. Fort Vigia fired a few shots from her two guns, one of which fell and burst short of *Charybdis* and another of which passed over her, but the guns were soon abandoned, and, after a short time, the flags were hauled down in both forts.

16. Firing from ships lasted twenty minutes, but I had five times to sound "cease fire" on account of not being able to see the fort through the dust and smoke caused by the bursting shell.

17. Some rifle shots were fired at *Charybdis* from the town, a few of them hitting the ship, but it was so inconsiderable that I took no notice of it. Directly after firing ceased I sent in Lieutenant Rawson and an armed boat's crew to take possession of the fort and blow up the guns, and also asked the Germans to do the same.

18. Our boat reached the shore first, and Lieutenant Rawson found the governor of Fort Libertador, the second commandant, 12 officers, and about 20 soldiers, also 35 prisoners (criminals).

19. Most of the garrison had escaped by dropping over the eastern wall of the fort, during the bombardment, into the shallow water. Two of them were found next morning with broken legs, having been in the water all night. They stated that they had been blown off the parapet by the bursting of a shell. These were the only casualties in that fort.

20. The fort was then taken formal possession of by an Anglo-German force, articles placed, etc.

21. We found in the fort two quite modern Krupp guns (about 3-inch caliber), two 64-pounder breechloaders, nine old Spanish brass guns, one of which weighed about 3 tons, and two muzzle-loading guns, about 18-pounders; also about 40 unmounted 64-pounders.

22. As stated before, all the guns were mounted on the wrong side of the fort

for repelling an attack from the position I had taken up, except one 64-pounder which commanded the entrance to the harbor and could not fire to seaward.

23. Next day *Charybdis* and *Vineta* landed demolition parties. The modern and all mounted iron guns were blown up. The small brass guns were taken on board ship. I have four in *Charybdis*, and also one of the flags flown over the fort.

24. We found the dens in which the unfortunate political prisoners had been kept till quite recently in a most filthy and insanitary state.

25. The interior of the fort, prison doors, etc., and the bridge over the moat have been destroyed by gun cotton, and the magazine blown up.

26. Commodore Scheder and I decided not to send a party to Fort Vigia, as, from what the American consul told us, there were from 2,000 to 3,000 armed men in the hills at the back of the town who could have fired on them from the heights as they went up the road.

27. Fort Vigia was a good deal knocked about. *Charybdis* range for Fort Libertador was 1,000 yards; for Fort Vigia, 2,500 yards. The shooting was excellent. No shots fell in or anywhere near the town.

28. On the afternoon of the 14th, arrangements having been made with the local authorities, through the United States vice-consul, the criminals found in the fort were handed over to them, and the officers and soldiers set at liberty, the two injured men being first attended to by the staff surgeon of the *Charybdis*.

29. Shortly after the bombardment was over I received a letter from the local authorities, containing no sort of apology for the insult to the British flag, but merely an evasive reply, stating that the British and German subjects at present enjoyed full liberty, but offering no assurance that this liberty would continue or that they would in the future be unmolested.

30. Officers and men all worked very well indeed, and, without making any invidious distinction, I should like to mention the name of Lieutenant Rawson, who carried out the duties intrusted to him in a most intelligent manner and with dash and coolness. Mr. Head, midshipman, who accompanied him, also showed that he had the makings of a good officer.

31. I trust that the proceedings of the German commodore and myself will meet with your approval, and also with that of the British and German Governments.

32. I left Puerto Cabello last night for La Gualra, the *Vineta* remaining to protect German and British subjects. When relieved by the *Panther* to-day, she will proceed to Curaçao.

33. I met the *Quail* last night at sea, and received your orders as to blockade. The *Quail* continued to Puerto Cabello with your letter for Commodore Scheder, and has returned here en route for Trinidad.

34. I am leaving at once for Curaçao to meet *Vineta*.

35. In conclusion, I would like to draw your attention to the very loyal manner in which Commodore Scheder assisted me in upholding the honor of the British flag, and I have much pleasure in saying that, from the Commodore downward, the relations between the two ships are of the best.

36. I should also like to mention the valuable assistance rendered to us by Mr. Valkner, the United States consul at Puerto Cabello, who acted as a go-between, and also gave us much useful information as to the state of affairs in the town. He appeared, and was, I am sure, most anxious to assist us in every way.

I have, etc.,

R. A. MONTGOMERIE

P. S.—I have just received from the captain of the Italian war ship *G. Bau-* in a translation of a letter he has received to-day from his consul here, which early shows that the bombardment has had a most excellent effect already, and I quite believe that, if it were necessary to do so, and I required that the forts here should haul down their flags at an hour's notice, my demand would be complied with rather than undergo a bombardment.

We have just observed the train leaving for Caracas with a gun, which looks as if they were afraid of the forts being captured and the guns blown up.

R. A. M.

[Inclosure 10.]

*Commander Eustace to Vice-Admiral Sir A. Douglas.*

ALERT, AT TRINIDAD, December 16, 1902.

SIR: I have the honor to inform you that, in compliance with your orders, proceeded in His Majesty's ship under my command at 10.30 p. m. on the 12th December to Cumana, where I arrived at 7.15 p. m. on the 13th.

2. Although dark, our arrival was at once reported by means of signal lights, and troops were sent to the custom-house. It was stated that there are now no guns in the forts, and that the field guns have been sent to Guiria.

3. The Government schooner *Coqueta*, at anchor off the custom-house, was then seized, and the crew landed without any interference. The *Coqueta* was towed to Araya Bay, where I remained at anchor from 10.30 p. m. on the 13th till 4 a. m. on the 14th, when I proceeded to windward of Coche, where I slipped the *Coqueta* and sent her in charge of Mr. P. W. C. Sharpe, midshipman, and a prize crew of 12 men to join your flag at Trinidad.

4. I then proceeded to search the island of Margarita for Venezuelan Government vessels, and visited Chacopata, Coche, Por la Mar, Port Mareno, Pampeta, San Juan Grego, and some small fishing villages.

5. The Venezuelan Government schooner *Marsiella*, while carrying troops, went ashore at Puerto Cabello, about the 10th instant, and is stated to have been broken up. The Government schooner *Americano* could not be seen or heard of. The steam launch belonging to Gen. Asunción Rodríguez, and used for carrying dispatches from Margarita, is stated to be now in German hands.

6. At 10.35 p. m. on the 14th I anchored in Esmeralda Bay, and not finding the *Coqueta* at this rendezvous, proceeded, at 4 a. m. on the 15th, to Carupano, where the Government sailing cutter *Britania* was seized at 6.30 a. m., and the only one of the crew on board was landed at Porto Santo, the second rendezvous.

7. On passing Esmeralda Point a signal light on a hill near Escondito was burnt, showing that an efficient lookout system is maintained. The forts and outposts on all the hills near Carupano were manned, but only one field gun was visible. No attempt was made to prevent our removing the *Britania*.

8. Finding that smallpox was prevalent at Porto Santo, no communication was allowed, and observing His Majesty's prize *Coqueta* to leeward, I took her in tow and proceeded to Trinidad, where I arrived at 6.30 p. m. on the 16th December, 1902.

I have, etc.,

JOHN EUSTACE.

[Inclosure 11.]

List of Venezuelan Government vessels, showing their disposal.

| Name.                | Description.                         | If captured—         |                           | Remarks.  |
|----------------------|--------------------------------------|----------------------|---------------------------|---|
|                      |                                      | By whom.             | When.                     |   |
| Marsiella .....      | Schooner .....                       | .....                | .....                     | Reported to have gone ashore at Puerto Cabello about December 10, and broken up.  |
| Bolivar .....        | Torpedo gunboat.....                 | Charybdis and Alert. | December 9....            | At port of Spain.   |
| Restaurador..        | Armed yacht.....                     | German squadron.     | Not known ....            |   |
| Zamora .....         | Armed transport.....                 | Alert.....           | December 10...            | Off Guiria.   |
| Zumbador ....        | Armed tug .....                      | do .....             | December 11...            | Captured southward of Guiria.   |
| Miranda .....        | Gunboat .....                        | Not yet seized ..... | .....                     |   |
| Veintetres de Mayo.  | Small armed dispatch boat.           | Alert.....           | December 10...            | Captured off Tiburone's Point, near Trapa.  |
| Crespo .....         | Armed yacht.....                     | German squadron.     | December 9....            | {Crespo and Tortuno destroyed by Germans.   |
| Tortuno .....        | Armed launch.....                    |                      |                           |   |
| Margarita (or Raya). | Torpedo boat.....                    | .....                | .....                     | Not captured, but engines destroyed by Retribution on December 9, as she could not be got out of Camber at La Guaira.                         |
| Ossun .....          | French transport hired by Venezuela. | Retribution.....     | December 9, at La Guaira. | French consul at La Guaira informed that Ossun would be given up to him on receipt of a guaranty that she would not be returned to Venezuela. |
| Coqueta.....         | Schooner (small arms).               | Alert.....           | December 13...            | At Cumana.  |
| Britania .....       | Revenue sailing cutter.              | do .....             | December 15...            | At Carupano.  |
| Americano....        | Schooner .....                       | Not yet captured     | .....                     |   |

A. L. DOUGLAS, Vice-Admiral.

[Translation.]

No. 231.]

Memorandum communicated by Count Metternich, January 10, 1903.

The Imperial Government interprets the reply from President Castro of the 8th January, 1903, to mean that he accepts unconditionally the reservations made in the German note of the 22d December, 1902. The Venezuelan Government would therefore have to pay the claim mentioned in reservation 1, or provide a guaranty for its payment, before entering into the negotiations. As President Castro's answer contains no statement as to when or how this payment is to be made or this guaranty given, further information is necessary as regards this point. In particular, in the event of there being no immediate payment, the security would have to be clearly explained, and it would have to be laid down, in the event of the guaranty being on the customs, by what method payment would be



ated from the latter. No further negotiations with Venezuela  
d be entered upon until payment has been effected or sufficient  
rity actually given.

he Imperial Government ventures to request the Government of  
United States to transmit this answer also to President Castro.

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*Haggard to the Marquess of Lansdowne—(Received January 12,  
1903).*

232.]

TRINIDAD, *December 19, 1902.*

Y LORD: I have the honor to transmit to your lordship a transla-  
of a proclamation issued by the President soon after the news of  
seizure of the Venezuelan ships of war in the harbor of La  
ira reached Caracas.

I avail, etc.,

W. H. D. HAGGARD.

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[Inclosure.]

*Proclamation by General Castro, dated December 9, 1902.*

ne following is a free translation of General Castro's proclama-  
to the nation on the occasion of the seizure of the Venezuelan  
by the allies:

zuelans!

e foot of the insolent stranger has profaned the sacred soil of the Father-

An act has been committed which stands alone in the history of nations  
eing without precedent and without any possible justification. It is a  
rous act, directed against the most rudimentary principles of the most  
shed rights of nations. The act which has just taken place in the port of  
uaira is one which is at once ignoble, immoral, abusing our friendship,  
avoring of both cowardice and treachery.

e German and the English squadrons have suddenly and simultaneously  
action, and surprised three defenseless ships belonging to our fleet which  
ust entered dock for repairs.

zuelans!

e duel that we are called upon to fight is most unequal, because the at-  
: upon our fatherland has been made by the two most powerful nations of  
pe. We are scarcely convalescent from a long and painful conflict, and  
se this has been realized by our enemies we are attacked in this most  
herous manner. Venezuela could not and did not expect such insolent ag-  
ion, and especially as there was no precedent for it. But justice is on our  
and the God of nations who inspired Bolivar and the phalanx of heroes  
were his companions in the great work he accomplished, and bequeathed  
at the cost of so great a sacrifice—the fatherland, liberty, and independ-  
-will inspire us, his sons, in these decisive moments, to preserve through-  
e conflict our national life, and strengthen us in our sacrifices, and assist  
the noble work of consolidating our national independence.

For my part, I am prepared to sacrifice all things on the revered and awful altar of the fatherland! I abandon my sense of injury, the result of our internal differences, and I have forgotten ingratitude which may have occurred in the past. The past is obliterated from my thoughts, and, as a politician and a soldier, everything has disappeared which was hostile to my intentions; everything which could leave pain in my heart has gone, and I only see before me the illumined vision of the fatherland as it was dreamed of by Bolivar, and as I desire to ever behold it. But the fatherland can not be great and powerful except in the pure atmosphere of perfect brotherhood of its sons. Circumstances demand the concurrence of all in these sentiments, and, under this necessity, I open the gates of all the prisons of the Republic and I release all political prisoners. I open, too, the gates of the fatherland to those Venezuelans who, for similar reasons have fled from the country, and I restore them to the full enjoyment of their constitutional rights and liberties. The properties and estates of all revolutionists which have been seized by the State in the interest of public order are returned to them. Furthermore, if I outlive these events and it is necessary for the welfare of the fatherland to remove me from the elevated position with which I have been honored by my people, and in which I am going to fight for our liberties, I am quite prepared to withdraw and to return again into private life. I here dedicate my sword to the service of the Republic, and you can be assured that when the time comes I shall retire satisfied and without desire to return to power, for my greatest aspirations are to see my country great, prosperous, and happy! Venezuelans! the sun of Carabobo returns to illuminate the horizon of the fatherland, and its resplendent beams of light raise in us a valor equal to that of Queseras del Medio, sacrifices like those of Ricaurte, terror like that of Pantango and Vargas, heroism like that of Rivas, and heroes like those which form the brilliant constellation of our epics, and by a happy coincidence we shall celebrate another classical date as sacred to a decisive battle for the liberties of South America—the battle of Ayacucho. I ardently desire that new Sucre may arise to illustrate the future glorious pages of our national history.

CIPRIANO CASTRO.

CARACAS, December 9, 1902.

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*The Marquess of Lansdowne to Sir M. Herbert.*

No. 233.]

FOREIGN OFFICE, January 12, 1903.

SIR: The United States chargé d'affaires told me to-day that he was instructed to inform me that Mr. Bowen had expressed to the United States Government his anxiety that the Venezuelan blockade should be raised at the earliest possible moment on account of the scarcity of provisions in Venezuela, which threatened general distress.

I told Mr. White that much as we desired that the blockade should not be unnecessarily prolonged, I did not see how it was possible for us to raise it at this moment. I had not failed to take note of Mr. Bowen's statement contained in the note which Mr. White had handed to me on the 9th instant. It ran as follows:

If, as I understand, Great Britain and Germany want to know what guaranty they will have, please inform them that it will be the custom-houses.

This no doubt amounted to an intimation that the Venezuelan Government were prepared, in one manner or another, to hypothecate their customs revenue for the purpose of meeting their liabilities in respect of the compensation due to the powers. We could not, however, considering the past conduct of the Venezuelan Government, find it expedient to remove the pressure, which had apparently brought them to a tardy recognition of their obligations, until we had something more specific than this to go upon. It seemed to us that the first step to be taken was that Mr. Bowen should meet our representative at Washington, and should satisfy him that the proposals which he is empowered to submit are in strict accordance with the conditions set forth in my memorandum of the 23d December and note of 5th January and, in particular, that he is authorized to effect a prompt and satisfactory settlement of those British claims which are included in the first of the three categories enumerated in the earlier notes.

The question of guarantees for the satisfaction of the remaining claims would also have to be carefully examined, and we were engaged in preparing instructions to you upon these and other points.

I could hold out no hopes that, until a satisfactory understanding had been arrived at with regard to them, the blockade would be raised. It would obviously be most inconvenient to raise it and afterwards to impose it in the event of the negotiations not proceeding satisfactorily.

I am, etc.,

LANSDOWNE.

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*The Marquess of Lansdowne to Sir M. Herbert.*

N. 234.]

FOREIGN OFFICE, *January 13, 1903.*

SIR: Your excellency is aware from the papers transmitted to you that on the 13th December the United States chargé d'affaires addressed a note to me, stating that the Government of Venezuela had requested the United States minister at Caracas to communicate to His Majesty's Government a proposition to the effect that the difficulty respecting the manner of settling claims for injuries to British subjects during the insurrection in Venezuela should be submitted to arbitration.

Mr. White told me on the 17th December that he had received instructions to inform me that the Venezuelan Government now earnestly wish for arbitration, which, in the opinion of the United States Government, seemed to afford a most desirable solution of the questions in dispute.

The proposal thus put forward through the Government of the United States received most careful consideration, and on the 23d

December I handed to Mr. White the reply of His Majesty's Government, which was as follows:

The scope and intention of the proposal made by the Venezuelan Government would obviously require further explanation. Its effect would apparently be to refer to arbitration only such claims as had reference to injuries resulting from the recent insurrection. This formula would evidently include a part only of the claims put forward by the two [British and German] Governments, and we are left in doubt as to the manner in which the remaining claims are to be dealt with.

Apart, however, from this, some of the claims are of a kind which no Government could agree to refer to arbitration. The claims for injuries to the person and property of British subjects, owing to the confiscation of British vessels, the plundering of their contents, and the maltreatment of their crews, as well as some claims for the ill usage and false imprisonment of British subjects, are of this description. The amount of these claims is comparatively insignificant, but the principle at stake is of the first importance, and His Majesty's Government could not admit that there was any doubt as to the liability of the Venezuelan Government in respect of them.

His Majesty's Government desire, moreover, to draw attention to the circumstances under which arbitration is now proposed to them.

The Venezuelan Government have, during the last six months, had ample opportunities for submitting such a proposal. On the 30th July and again on the 11th November it was intimated to them in the clearest language that unless His Majesty's Government received satisfactory assurances from them, and unless some steps were taken to compensate the parties injured by their conduct, it would become necessary for His Majesty's Government to enforce their just demands. No attention was paid to these solemn warnings, and, in consequence of the manner in which they were disregarded, His Majesty's Government found themselves reluctantly compelled to have recourse to the measures of coercion which are now in progress.

His Majesty's Government have, moreover, already agreed that in the event of the Venezuelan Government making a declaration that they will recognize the principle of the justice of the British claims, and that they will at once pay compensation in the shipping cases and in the cases where British subjects had been falsely imprisoned or maltreated, His Majesty's Government will be ready, so far as the remaining claims are concerned, to accept the decision of a mixed commission, which will determine the amount to be paid and the security to be given for payment. A corresponding intimation has been made by the German Government.

This mode of procedure seemed to both Governments to provide a reasonable and adequate mode of disposing of their claims. They have, however, no objection to substitute for the special commission a reference to arbitration, with certain essential reservations. These reservations are, so far as the British claims are concerned, as follows:

1. The claims (small, as has already been pointed out, in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews, and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration.

2. In cases where the claim is for injury to, or wrongful seizure of, property, the question which the arbitrators will have to decide will only be (a), whether the injury took place and whether the seizure was wrongful, and (b), if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

3. In the case of claims other than the above, we are ready to accept arbitration without any reserve.

It would, in the opinion of both Governments, be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government, and the means to be resorted to for the purpose of guaranteeing a efficient and punctual discharge of the obligation.

Should the President of the United States be willing to undertake the task of arbitrator, the British and German Governments would avail themselves of his aid and offices with the highest satisfaction.

If it should, unfortunately, prove impossible for the President to render this important service to the two Governments, they are prepared to refer the questions at issue to arbitration by The Hague Tribunal.

By note dated the 27th December Mr. White informed me that the President of the United States profoundly appreciated the courtesy in which the powers in interest had suggested his name as arbitrator in the matters now pending in Venezuela; and if no other—or better—means of settling the subjects in dispute presented themselves, he would willingly comply with the wishes of the powers and devote his best efforts to an end so laudable. But the President had thought it most desirable from the beginning that the entire controversy should be submitted to the judgment of that high tribunal at The Hague, which had been created by the principal powers of the world for the consideration of precisely such causes, involving, as the present controversy did, no question of national honor nor the cession of territory.

After a thorough consultation with all of the powers concerned, finding which the President had found an honorable spirit of candor and of mutual consideration animating every one of them, he had been greatly gratified to learn that, in the event of his not undertaking the important duty to which the powers had invited him, they would all be willing to accept a reference to The Hague.

The President had, therefore, the greatest pleasure in announcing to the Governments of Great Britain, Germany, Italy, and Venezuela that all of them had accepted in principle the proposition of a reference of pending questions to the tribunal of The Hague.

If the President could be of any further service in arranging the preliminaries of such an understanding, he would gladly hold himself at the disposition of the powers concerned; and if their representatives should find it desirable to meet in Washington he would be happy to welcome them there and facilitate their labors in every possible way.

In handing me this note Mr. White inquired whether, as the Venezuelan Government had accepted the principle of arbitration by The Hague Tribunal, the President was at liberty to communicate to that

Government the conditions embodied in my communication of the 23d instant.

I told Mr. White that there could be no objection to this. I expressed the regret with which I had learned that the President had found himself unable to undertake the office of arbitrator, and I took note of his considerate offer to hold himself at the disposition of the powers concerned, in the event of his assistance being required in arranging the preliminaries of a reference to arbitration. I added, however, that it seemed to me that, for the moment, there was nothing more to be done, until we knew whether our terms were acceptable to the Venezuelan Government.

On the 1st instant Mr. White communicated to me the following copy of a telegram received on the previous day by Mr. Secretary Hay from Mr. Bowen, the United States minister at Caracas.

I have received the following answer from the President of Venezuela :

"I recognize, in principle, the claims which the allied powers have presented to Venezuela. They would already have been settled if it had not been that the civil war required all the attention and all the resources of the Government. To-day the Government bows to superior force, and desires to send Mr. Bowen to Washington at once to confer there with the representatives of the powers that have claims against Venezuela, in order to arrange either an immediate settlement of all the claims, or the preliminaries for a reference to the tribunal of The Hague, or to an American Republic, to be selected by the allied powers and by the Government of Venezuela. Mr. Bowen would be duly authorized to settle the whole question as the representative of Venezuela.

"CIPRIANO CASTRO."

The decision of His Majesty's Government was conveyed to Mr. White on the 5th instant.

They observed with satisfaction President Castro's statement that he recognized "in principle" the claims which they had put forward. His Majesty's Government understood this statement to signify that President Castro agreed on the part of the Venezuelan Government that any discussions in which Mr. Bowen, as the representative of that Government, was to engage at Washington with the representative of His Majesty's Government were to proceed upon the assumption that the Venezuelan Government unreservedly accepted and agreed to be bound by the conditions laid down on the 23d of December.

On receiving a definite assurance from President Castro that this interpretation of his language was accepted by him as correct, and that whatever procedure were adopted adequate provision would be made for the prompt satisfaction of the claims specified in paragraph 1 of the conditions, His Majesty's Government would be prepared to authorize His Majesty's ambassador at Washington to confer on this basis with Mr. Bowen, as the representative of the Venezuelan Government, and would furnish your excellency with the



necessary instructions for examining the possibility of an immediate settlement, or, failing such a settlement, for arranging a reference of all points left open for arbitration to the tribunal at The Hague.

The reply from the President of Venezuela, received by Mr. Hay on the 8th instant and transmitted to me by Mr. White on the 9th in the form of a telegram from Mr. Bowen, was as follows:

I have just received the following from President Castro:

"MR. MINISTER: The Venezuelan Government accepts the conditions of Great Britain and Germany, and requests you to go immediately to Washington for the purpose of conferring there with the diplomatic representatives of Great Britain, Germany, and with the diplomatic representatives of the other nations that have claims against Venezuela, and to arrange either an immediate settlement of said claims or the preliminaries for submitting them to arbitration.

"CIPRIANO CASTRO,  
"Constitutional President."

[Confidential.]

If, as I understand, Great Britain and Germany want to know what guarantee they will have, please inform them that it will be the custom-houses; consequently, I beg that the blockade be raised at once.

BOWEN.

Mr. White was instructed to inform me at the same time that Mr. Bowen would proceed to Washington immediately, and I have since learned that he is expected to reach New York on the 19th instant.

I have now to give your excellency the following instructions:

Mr. Bowen will no doubt on his arrival at Washington ask you whether directly or through the United States Government to receive him, and you should in reply intimate that you are authorized to confer with him as the representative of the Venezuelan Government for the purpose of examining the possibility of an immediate settlement of the claims put forward by His Majesty's Government, or, failing such a settlement, of arranging a reference of all points left open for arbitration to the tribunal at The Hague.

The course of the negotiations will, in a great measure, depend on the instructions with which Mr. Bowen has been furnished, and you will, in the first place, ascertain whether the proposals which he is empowered to submit are in strict accordance with the conditions set forth in my memorandum of the 23d December and note of the 5th January, to which reference has been already made.

Whether those proposals are made in contemplation of an immediate settlement without reference to arbitration, or whether the discussion is directed to the preliminaries of arbitration, it will be indispensable that Mr. Bowen should at the outset satisfy you that he is authorized to arrive at a prompt and satisfactory settlement of the British claims which are included in the first of the three categories enumerated in the memorandum of the 23d December—claims,

namely, which arise out of the seizure and plundering of British vessels and the outrages on their crews, and the maltreatment and false imprisonment of British subjects. These claims amount to about £5,500, and His Majesty's Government require that this liability should be at once satisfied.

Other claims for compensation, including the railway claims and those for injury to, or wrongful seizure of, property, are estimated as amounting to about £600,000. His Majesty's Government will be ready to accept in satisfaction of these claims either a sufficient cash payment or a guarantee based on security which must be adequate, and which the Venezuelan Government must be bound not to alienate for any other purpose. His Majesty's Government will be ready to renew the proposal which they deemed it equitable to make in the first instance, viz, that, before the amount to be actually handed over to claimants of this class is finally decided, a commission, upon which Venezuela would be represented, should be appointed to examine and report upon the amount to be awarded in satisfaction of each claim. It would probably be convenient that the commission, if appointed, should meet at Port of Spain. Should a cash payment have been accepted by His Majesty's Government, they will be prepared to refund any surplus which may be available after the examination.

It is desirable that advantage should be taken of this opportunity in order to effect a settlement of the claims of the bondholders. The British creditors are principally interested in the loan of 1881. This loan represents the outcome of various arrangements under which the bondholders have submitted to large reductions in their claims. On the 31st December last there were 56 monthly installments of the debt service in arrear, representing a sum of about £394,625. An arrangement for the settlement of the external debt of Venezuela has been drawn up by the council of foreign bondholders and the Disconto Gesellschaft of Berlin. The terms of this arrangement seem to be of a liberal character, and should be acceptable to the Venezuelan Government. I understand that in March, 1901, the Venezuelan National Assembly passed a law authorizing the President to make a settlement with the bondholders on these lines. I inclose copies of memoranda furnished to me by the council of foreign bondholders, showing the present position of the 1881 and 1896 loans.

If the endeavor to arrive at a direct settlement should prove unavailing, you will proceed to discuss with Mr. Bowen the preliminaries of a reference to the Tribunal of Arbitration at The Hague.

Before the signature of an agreement for reference to the tribunal it will be necessary that the claims in the first category should, as in the case of a direct settlement, be disposed of by an immediate payment. The other claims, including those for injury to property and

the claims of the bondholders, would be submitted to the tribunal on the conditions laid down in the memorandum of the 23d December.

There is another point which you should take an early opportunity of mentioning to Mr. Bowen. The establishment of a blockade created ipso facto a state of war between Great Britain and Venezuela, involving, it might possibly be contended, the abrogation of any treaty existing between the two countries. In these circumstances, you should suggest an exchange of notes between your excellency, as His Majesty's representative, and Mr. Bowen, as representative of the United States of Venezuela, to the effect that it is agreed that the convention between Great Britain and Venezuela of the 29th October, 1834, which adopted and confirmed (*mutatis mutandis*) the treaty of the 18th April, 1825, between Great Britain and the State of Colombia, shall be deemed to be renewed and confirmed, or, if the Venezuelan Government should prefer, provisionally renewed and confirmed pending the conclusion of a fresh treaty of amity and commerce.

It may be convenient that I should recapitulate briefly the instructions contained in the preceding paragraphs.

1. If an arrangement is concluded for a direct settlement:

(a) Claims arising out of the seizure and plundering of British vessels and the outrages on their crews, and the maltreatment and false imprisonment of British subjects, must be at once satisfied.

(b) Other claims for compensation, including the railway claims and those for injury to, or wrongful seizure of, property must be met either by an immediate payment to His Majesty's Government or by a guaranty adequate, in your opinion, to secure them. These claims can, if this be desired, be examined by a mixed commission before they are finally liquidated.

(c) A fresh arrangement must be entered into by the Venezuelan Government in order to satisfy the claims of the bondholders, and this arrangement must include a definition of the sources from which the necessary payments are to be provided.

2. If recourse is had to the tribunal at The Hague:

(a) Immediate payment must be equally made of the claims in the first category.

(b) The other claims, including those of the bondholders, will be referred to the tribunal on the conditions laid down in the memorandum of the 23d December.

In either case, there must be an exchange of notes renewing the convention of the 29th October, 1834.

On learning that the negotiations have resulted in an agreement fulfilling the above conditions, His Majesty's Government will at once give orders that the blockade of the Venezuelan ports by His Majesty's ships shall be raised. They will also be prepared to restore

the vessels of the Venezuelan navy which have been seized, and, further, to release any other vessels captured under the Venezuelan flag on receipt of a guaranty from the Venezuelan Government that they will hold His Majesty's Government indemnified in respect of any proceedings which might be taken against them by the owners of such ships or of goods on board them.

All obstacles to the removal of diplomatic intercourse will then have been removed, and His Majesty's Government will be happy to reestablish those friendly relations between Great Britain and Venezuela which previously existed and which they sincerely desire to resume.

I am, etc.,

LANSDOWNE.

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[Inclosure.]

*Memoranda on Venezuelan Loans of 1881 and 1896.*

LOAN OF 1881.

In 1834 Venezuela became responsible for 28½ per cent of the original Colombian debt, which was contracted in this country to carry on the war of independence against Spain. The amount of debt so assumed by Venezuela was £1,888,396 principle and £906,430 arrears of interest. Total, £2,794,826.

Until 1841 no interest was paid on this debt. In that year a settlement was made by which the bondholders submitted to considerable sacrifices.

In 1847 default occurred. In 1859 an arrangement was made, when further concessions were demanded of the bondholders. Default again took place in the following year.

In 1862 the arrears of interest under the 1859 arrangement were funded and a new loan of £1,000,000 was issued.

In 1864 a further loan for £1,500,000 was floated. In the same year payments on the 1859 and 1862 loans were discontinued, and in 1867 default was made on the 1864 loan. With the exception of a payment of 3 shillings in the pound on the coupons in 1876-1878, the whole of the loans remained in default until 1881. In that year the loans of 1859, 1862, and 1864 were converted into a new consolidated debt, the bondholders once more having to submit to large reductions.

Interest on the consolidated debt was reduced to 3 per cent until the unification of the external and internal debts could be effected, when it was to be increased to 4 per cent. Venezuela, however, raised various difficulties in the way of the unification being carried out, and has never paid more than 3 per cent.

In 1897 default again took place; since then a small amount has been remitted at irregular intervals sufficient to pay off the balance of the coupon due February, 1898; and half the coupon due August, 1898.

At the present time the amount of principal outstanding is 66,614,550 bolivars, or, say, £2,638,200, and the amount due for the service of the debt in arrear up to the 31st December, 1902, fifty-six monthly installments of 177,938.53 bolivars, equivalent to 9,964,280 bolivars, or say, £394,625.

During the sixty-nine years that have elapsed since Venezuela became an independent State it may be reckoned that the external debt contracted in this country has been in default for nearly forty years, and that during the same

period the Republic has compelled the bondholders to accept five arrangements, under each of which they have had to submit to large sacrifices of their rightful claims.

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**FIVE PER CENT LOAN OF 1896.**

This loan was for 50,000,000 bolivars, or, say, £1,980,198. It was issued through the Disconto Gesellschaft of Berlin for the purpose of settling the railway guarantees in arrear and the redemption of the same guarantees in the future, the acquisition of some of the railways by the Government, and the completion of the Central Railway.

. The amount of bonds issued to English companies was 6,800,000 bolivars, or, say, £269,307. These companies had to submit to large reductions of their claims.

The service of the loan went into default in 1897. Between that date and 1901 some small payments were made by the Venezuelan Government which were sufficient to discharge the June, 1898, coupon and 56 per cent of the December, 1898, coupon and sinking fund.

The amount of the principal outstanding is 48,807,440 bolivars, or, say, £1,932,967, and the amount of the interest and sinking fund in arrear to the 31st December, 1902, is 12,660,097 bolivars, or, say, £501,390.

The loan bears 5 per cent interest and 1 per cent accumulative sinking fund, and is secured on a sufficient amount of the customs revenues of the Republic to provide 3,000,000 bolivars annually. No other loan enjoying equal or better rights can be issued by Venezuela until the 1896 loan has been entirely repaid.

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*Mr. Haggard to the Marquess of Lansdowne—(Received January 14, 1903).*

No. 235.]

TRINIDAD, December 30, 1902.

MY LORD: In my dispatch of the 18th August last I had the honor to give your lordship a report on the subject of the *Harry Troop*, which had formed the subject of my note to the Venezuelan Government of the 4th August, inclosed in my dispatch of the 6th August last.

In the first mentioned of these dispatches I informed your lordship of the steps which I had taken on behalf of the ship, in view of the report on the matter which I had received from His Majesty's consul at Ciudad Bolivar.

I also inclosed a copy of a letter which I had received from the United States secretary of legation subsequent to those representations, and remarked that this letter and Mr. Russell's later verbal statement to me about the ship would seem to indicate that the case was not as urgent as Mr. de Lemos supposed it to be.

I regret to say that it would appear from what Mr. de Lemos, who is here now, informs me, and from the copy of the dispatch which I have the honor to inclose, that I placed too much faith on the com-

plete accuracy of Mr. Russell's statements as to the improvement in the condition of the ship, etc., when he saw her, subsequent to Mr. de Lemos's above-mentioned report. These may probably be accounted for by the facts, which appear to be undoubted, that the American minister was most anxious, for reasons best known to himself, to represent the conduct of the Venezuelan authorities in the most favorable possible light, and that he had inspired his subordinate in the same direction. To put it briefly, Mr. Russell did not dare to say a word outside the legation contrary to General Castro's modes of proceeding. However that may be, and Mr. de Lemos's statement as to the attitude of the captain of the *Marietta*, and of Mr. Russell at Ciudad Bolivar, bears out those which I have received hence as to their action before going up the river, it seems undoubted that the *Harry Troop* was subjected to a series of grossest outrages, that substantial compensation—which Mr. de Lemos estimates at £7,000—is due on account of her forcible detention during six months, against all law, or even pretext (for that detention began on the 1st of June, whereas the so-called blockade was not proclaimed till a month later), for the violent robbery by the Venezuelan Government authorities of part of her cargo and the loss of other portions of it, for the death of one of the crew, and the sickness of all the rest of them, so that they were, as Mr. de Lemos describes, "human wrecks," when His Majesty's ship *Pantome* released her, and for the suffering and anxiety experienced by the captain by the constant threats of death and sinking of his ship by the Venezuelan officer commanding the Government troops.

If it is possible to discriminate between the degrees of iniquity of the various cases of gross outrage and violence and disrespect of the British flag, of which His Majesty's Government have to complain, this would appear to be one of the worst in intention and fact, as it certainly is in gravity of loss and of prolonged suffering, for which exemplary punishment or, failing the possibility of this, exemplary compensation, is due by the Venezuelan authorities.

I have, etc.,

W. H. D. HAGGARD.

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[Inclosure.]

*Vice-Consul de Lemos to Mr. Haggard.*

QUEEN'S PARK HOTEL, PORT OF SPAIN,  
Trinidad, December 23, 1902.

SIR: With reference to the outrage committed by the Venezuelan Government authorities on the British schooner *Harry Troop*—Captain Thorbourne, of Liverpool, Nova Scotia—I beg leave to state:

The vessel was illegally detained at an unhealthy place in the Orinoco by General Sarria and other Venezuelan Government officials from the 28th May (a



month before the blockade had been declared) until November last. Part of her cargo was requisitioned by Government troops; her whole crew was ill with dysentery and fever, and one of the sailors died. The rest had to remain for weeks in hospital, and were still human wrecks when she did leave the Orinoco in November. During the fighting at San Felix several bullets struck the vessel, and the Venezuelan gunboat *Bolívar* threatened to sink her in case she moved from her anchorage.

When the United States ship *Marietta* visited the Orinoco in August, she could not render any assistance to the *Harry Troop*, as at that time her whole crew were down with dysentery, and unfit to handle or move the vessel.

In September a new crew had to be sent to San Felix to navigate the *Harry Troop* to Bolívar. She was only able to leave the latter port in November on arrival of His Majesty's ship *Fantome*, who gave her the necessary protection.

The material losses suffered by the *Harry Troop* must be considerable, while the mental anxiety and bodily suffering of the master and crew were severe. Not the slightest consideration of respect for her flag was shown by the Venezuelan Government authorities.

The captain's sworn protest, etc., are in the archives of the consulate at Bolívar.

I have, etc.,

C. H. DE LEMOS,

*His Majesty's Consul at Ciudad Bolívar.*

*The Marquess of Lansdowne to Sir F. Lascelles.*

No. 236.]

FOREIGN OFFICE, *January 15, 1903.*

SIR: I had some conversation yesterday with the German ambassador in regard to the action which might be taken by the British and German Governments in consequence of the communication made to us on the 9th instant by the Government of the United States as to Venezuelan affairs.

His excellency asked me whether His Majesty's Government had sent any reply to the communication in question, and I informed him that its receipt had been acknowledged, but that we had not thought it necessary to make any comments upon its contents. I had, however, had several conversations with the United States chargé d'affaires, whom I had informed that, in the view of His Majesty's Government, it was desirable that our representative at Washington should discuss the questions at issue with Mr. Bowen on his arrival at that place.

His excellency explained to me that the German Government interpreted President Castro's reply of the 8th January to mean that he accepted unconditionally the reservations made in the German note of the 22d December, 1902. The Venezuelan Government would, therefore, have to pay the claim mentioned in Reservation I, or provide a guaranty for its prompt payment, before entering into negotiations. The German Government considered that, as President Castro's answer contained no statement as to when or how this

payment was to be made or this guaranty given, further information was necessary on the point.

In particular, should there be no immediate payment, the security would have to be clearly explained, and it would have to be laid down, in the event of the guaranty being on the customs, by what method payment would be effected from the latter. The German Government thought that no further negotiations with Venezuela ought to be entered into until payment had been effected or sufficient security actually given, and they suggested that His Majesty's Government should reply in this sense.

I told his excellency that it did not seem to me desirable that we should attempt at this stage to press President Castro further upon these points. As I understood the matter, Mr. Bowen had been intrusted with full powers by the Venezuelan Government. President Castro had, by accepting our conditions, admitted that it was essential that arrangements should be made for the settlement of the first-rank claims, and a provision for such settlement should, I thought, be insisted upon by the representatives of both powers before they attempted to discuss other points with Mr. Bowen.

His excellency called my attention to the fact that President Castro's letter apparently contemplated that Mr. Bowen should confer not only with the representatives of Great Britain and Germany, but with those of all other nations having claims against Venezuela. His excellency regarded this intimation with some alarm.

I said that it seemed to me that the blockading powers stood on an entirely different footing from the rest, and that, in my view, it would be impossible for us to allow our representatives to take part in a general discussion at which a number of other powers would also be represented.

In my view the most convenient procedure would be that the British and German representatives should negotiate separately with Mr. Bowen, but should keep one another fully informed as to their proceedings.

I subsequently communicated to his excellency a copy of my dispatch of the 13th, containing my instructions to Sir M. Herbert. His excellency called upon me to-day and informed me that he had telegraphed the purport of these to the German Government, and that they entirely concurred with us as to the general tenor of the instructions. They also thought that it might be convenient that the British and German representatives should negotiate separately with Mr. Bowen. It was, however, important that they should remain in touch with one another, and it was in particular desirable that any arrangement arrived at in regard to the bondholders should be concurred in by both representatives. It was impossible to distinguish

between the claims of the British and those of the German bondholders, and they had, in fact, arrived at an agreement for a common scheme, which we regarded as a reasonable compromise.

I am, etc.,

LANSDOWNE.

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*The Marquess of Lansdowne to Sir M. Herbert.\**

No. 237.]

FOREIGN OFFICE, *January 16, 1903.*

SIR: I inclose, for your information, a copy of a dispatch which I have addressed to Sir F. Lascelles recording my most recent conversations with the German ambassador in regard to Venezuelan matters.

I desire to call your excellency's special attention to the manner in which the conferences with Mr. Bowen should be conducted. His Majesty's Government are not prepared to join in a general discussion with other powers as to the questions at issue with Venezuela, and your excellency must make it clear to Mr. Bowen that you are authorized to discuss with him only the British claims and the proposals which he may offer for their liquidation.

You will, however, communicate with your German and Italian colleagues as to the progress of your negotiations, and they will no doubt be instructed to keep you informed of their proceedings.

I am, etc.,

LANSDOWNE.

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[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received January 21).*

No. 238.]

WASHINGTON, *January 21, 1903.*

I received a visit to-day from Mr. Bowen, who formally requested that the blockade should be raised before the commencement of negotiations.

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[Telegram.]

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 239.]

FOREIGN OFFICE, *January 21, 1903.*

With regard to your excellency's telegram of to-day, you will see from your instructions that the fulfillment of certain conditions is required before His Majesty's Government will consent to the blockade being raised.

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\* Substance telegraphed.

[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received January 24).*

No. 240.]

WASHINGTON, January 23, 1903.

Venezuela. Mr. Bowen accepts, without reserve, the conditions laid down by His Majesty's Government.

For the payment of claims of the second category he proposes that 30 per cent of the receipts of the Puerto Cabello and La Guaira custom-houses should be made over to the powers every month, and that, should Venezuela fail to make this payment, the creditor nations shall be authorized to administer the said two custom-houses, putting in Belgian officials, with the consent of and without opposition on the part of Venezuela, until the entire foreign debt is paid.

Mr. Bowen gives as his reason for selecting Puerto Cabello and La Guaira that they are the most important ports in the country, and that, owing to their geographical position, they are not liable, as the others are, to fall into the hands of the revolutionists at any moment, but will remain under the control of the Government.

Mr. Bowen informs me that 25 per cent of the customs receipts are already devoted to the maintenance of the local State government in which each port is situated, and 13 per cent to the payment of existing diplomatic claims. Adding to this the 30 per cent now promised, only 32 per cent would be left for the expenses of the Government and the payment of the army, and Venezuela could not possibly get on with less.

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[Telegram.]

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 241.]

FOREIGN OFFICE, January 24, 1903.

The proposals made by Mr. Bowen, as reported in your telegram of to-day's date, are considered by His Majesty's Government to be satisfactory in principle, and would be useful as a basis for the discussion which is about to be commenced by your excellency.

Without fuller explanations, however, as to the financial arrangements which are proposed, it is impossible to realize their effect, and as regards certain points we should require definite information.

These points are as follows:

1. There are, so far as we are aware, no published statistics as regards the customs receipts of La Guayra and Puerto Cabello. What is their estimated annual value?

2. It is impossible to judge to what extent the proposals are ade-

quate to satisfy the British claims without information as to the amount of the entire foreign debt.

Report its exact figure.

3. When the Venezuelan Government offer 30 per cent of the customs of La Guayra and Puerto Cabello, do they mean the entire customs, or only 30 per cent of the 40 per cent of the total amount set apart by the law of 1873 for debt and development of the country, which includes the 13 per cent for the diplomatic debt, to which Mr. Bowen refers?

4. Is it proposed that the 30 per cent should be paid by monthly installments to the blockading powers only, or are the whole of the creditor powers also to share the benefit?

We shall be quite ready to accept the security proposed by Mr. Bowen if he can supply statements showing that he offers guarantees adequate in amount, and we shall be prepared to urge the German and Italian governments to accept it.

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[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received January 25).*

No. 242.]

WASHINGTON, January 24, 1903.

With reference to my telegram of yesterday, according to a statement made to me to-day by Mr. Bowen, the total customs receipts of all the Venezuelan ports, reckoned on the average of the last three years, should produce a yearly revenue of at least 30,000,000 bolivars; while the yearly yield of those of Puerto Cabello and La Guayra should amount to 18,000,000 bolivars.

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[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received January 25).*

No. 243.]

WASHINGTON, January 24, 1903.

Venezuela. Mr. Bowen has left with me a copy of his full powers, of which the following is a translation:

The Venezuelan Government grant full powers to Mr. Herbert W. Bowen to concert in Washington with the diplomatic representatives of the nations who have claims against Venezuela for the immediate settlement of those claims or

for the arrangement of the preliminaries for the submission to arbitration of those which it may be impossible to settle immediately.

Caracas, January 7, 1903.

The Constitutional President,  
CIPRIANO CASTRO.

(Countersigned) :

The minister of the interior, charged  
with the ministry of foreign affairs,  
R. LÓPEZ BARALT.

Legalized by the American chargé d'affaires,  
W. RUSSELL.

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[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received January 25).*

No. 244.]

WASHINGTON, January 25, 1903.

Venezuela. With reference to your telegram of yesterday, the following are Mr. Bowen's answers to your lordship's questions:

1. The value of the customs receipts of the two ports amounts to 18,000,000 bolivars yearly.

2. The total debt of Venezuela amounts to about 239,000,000 bolivars. This includes internal debt to the amount of 94,000,000 and exterior debt to the amount of 145,000,000.

3. Thirty per cent of the entire customs receipts of the two ports is offered by the Venezuelan Government.

4. Each of the creditor powers is to receive a share of the 30 per cent; 29,000,000 bolivars approximately is the amount of the total claims of the other powers who are not engaged in the blockade. As to our claims of the first line, Mr. Bowen agrees that they shall be satisfied. I am to receive from him for this purpose a promissory note for £5,500, payable within thirty days.

As soon as he is informed that the necessary orders have been issued for the raising of the blockade, which he trusts that your lordship will now consent to do within twenty-four hours, he will sign the promissory note, together with the protocol in which the other conditions which His Majesty's Government impose, all of which he has accepted, will be embodied.

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[Telegram.]

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 245.]

FOREIGN OFFICE, January 26, 1903.

Although we shall certainly not interpose vexatious difficulties, and earnestly desire to arrive at early settlement, we must have



further explanation with regard to the Venezuelan proposal contained in your telegram of the 25th instant. On the following points we should be glad of further information:

It is understood that £213,000 is the sum which 30 per cent of the customs of the two ports would yield, and that this amount is intended to meet not only the claims of all the powers for compensation, but the entire foreign debt of Venezuela, which amounts to £5,742,000. The claims of the three powers engaged in the blockade will reach nearly £900,000, and those of nonblockading powers will reach some £1,148,514 in amount.

If only £213,000 a year is available, it is obvious that many years will elapse before the whole of the above liabilities are extinguished. In these circumstances the interest of the creditors would be far from assured, considering the insecurity of affairs in Venezuela.

We consider that the claims of the powers engaged in the blockade should not rank on the same line with other claims for compensation or by bondholders, and that some special arrangement should be made with regard to the former.

A portion of the revenue of the two ports might possibly be set apart under an arrangement by which the extinction of British, German, and Italian claims, within, say, five years, would be provided for. It is presumed that this could be arranged without the other creditor powers, whose interests we have undertaken to respect, being injuriously affected.

We shall be prepared at once to move the German and Italian Governments to join with us in raising the blockade, in the event of a satisfactory arrangement on these lines being made.

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[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received January 27).*

No. 246.]

WASHINGTON, January 27, 1903.

Venezuela. With reference to your lordship's telegram of yesterday, it is not intended that the 30 per cent of the receipts of the La Guayra and Puerto Cabello customs shall meet the foreign debt, but they are to be exclusively devoted to the object of paying off the claims for compensation which all the powers have put in.

It is impossible for Mr. Bowen, who stands committed to the other powers, to give to the blockading powers priority over them in respect of payment. He asserts that all the creditor nations would have been placed on an equal footing if the question of claims had been referred to The Hague Arbitration Tribunal.

[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received January 27).*

No. 247.]

WASHINGTON, January 27, 1903.

Venezuela. The text of the agreement which Mr. Bowen has signed respecting the payment of the 30 per cent of the customs receipts of the two ports runs as follows:

I hereby agree that Venezuela will pay 30 per cent of the total income of the ports of La Guayra and Puerto Cabello to the nations that have claims against her, and it is distinctly understood that the said 30 per cent will be given exclusively to meet the claims mentioned in the recent ultimatums of the allied powers and the unsettled claims of other nations that existed when the said ultimatums were presented. At the end of each month the amount of the total income of the two said ports will be duly announced to the creditor nations, and 30 per cent of that amount will be paid to them, even if the whole amount should be lost or stolen, for Venezuela in that case would be bound to pay the said 30 per cent, even if she has to take it from other custom-houses or borrow the said 30 per cent. It is further understood that the said 30 per cent is to be considered absolute and unchangeable, and not to be diminished by any other agreements ever made or ever to be made affecting the customs receipts of the said two ports.

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 [Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received January 27).*

No. 248.]

WASHINGTON, January 27, 1903.

Venezuela. With reference to my telegram of the 25th instant, Mr. Bowen to-day told me that he would be in a position, as soon as we had signed a protocol of agreement, to hand me, in settlement of the claims of the first category put forward by His Majesty's Government, a draft for £5,500 on New York, payable at once.

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 [Extract.]

*The Marquess of Lansdowne to Sir F. Lascelles.*

No. 249.]

FOREIGN OFFICE, January 27, 1903.

The German ambassador called upon me to-day and we further discussed the position of the Venezuelan negotiations. I communicated to his excellency the substance of my telegram to Sir M. Herbert of the 26th instant. It did not seem to the German Government that the assignment of 30 per cent of the revenue of the two ports was a sufficient provision, if it was to be made use of, not only for the

purpose of compensating the three blockading powers, but also for that of satisfying the claims of the other powers.

Count Metternich told me that he thought it essential that in any case a special arrangement should be made for the settlement of the first rank. As to these, Germany would expect to be paid in cash if our first-rank claims were to met by cash payment. If we accepted a security, they would accept a security also, which might take the shape of a first call upon the assigned customs revenues.

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[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received January 28).*

No. 250.]

WASHINGTON, January 28, 1903.

Venezuela. Mr. Bowen expresses the earnest hope that the three powers will not insist on the settlement of further questions of detail concerning the mixed commission and the supervision of the collection of customs, etc., which I referred to in the course of a conversation with him yesterday, until after the blockade has been raised, because the discussion of these points might result in further delay. He has promised that any reasonable suggestions which the three representatives may make in connection with these questions will meet with no objection from him.

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[Telegram.]

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 251.]

FOREIGN OFFICE, January 28, 1903.

With reference to your telegrams of the 27th instant, His Majesty's Government can not admit that pledges given by Mr. Bowen to the powers which are not engaged in the blockade are binding on this country, and His Majesty's Government can not accept a settlement which would force them to place their claims on the same footing with those of the nonblockading powers.

It should not be difficult to make a separate arrangement with the blockading powers by which annual installments would be guaranteed to them, secured on a part of the customs revenues of the two ports sufficient to extinguish their claims. Those claims amount to about £900,000, and I would suggest that six years would be a reasonable period for payment. The Venezuelan Government would not be prevented by this plan from making, with the other powers,

simultaneous arrangements by which their claims for compensation would be satisfied.

You should discuss the matter with your German and Italian colleagues.

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[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received January 29).*

No. 252.]

WASHINGTON, January 29, 1903.

Venezuela. The Italian ambassador, the German chargé d'affaires, and I called to-night on Mr. Bowen. I informed him that we were forced to reckon with public opinion in England, and that it might be necessary to fall back on the tribunal of The Hague.

We were unable to obtain a satisfactory answer from Mr. Bowen, who was very obdurate.

He ultimately made a statement in reply in the following terms:

I object to paying first the claims of the allied powers and the claims of the other nations afterwards, because—

1. I think it is unjust, unfair, and illegal to tie the hands of the said other nations for the period of five or six years that it would take to pay the claims of the allied powers;

2. If I recognize that brute force alone can be respected in the collection of claims, I should encourage the said other nations to use force also;

3. If the allied powers wanted preferential treatment, they should have asked for it in the beginning, and should not now propose it after I understood that all the conditions of the allied powers had been stated.

If, however, this demand for preferential treatment is raised simply as a point of honor, I am willing to agree that the entire 30 per cent be paid to the allied powers for the first month.

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[Telegram.]

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 253.]

FOREIGN OFFICE, January 29, 1903.

With reference to your telegram of the 28th instant, we are quite ready to consent that points of detail with regard to the mixed commission or other matters should be reserved for further discussion with Mr. Bowen, so far as practicable, as we should be most unwilling to cause delay at this stage by discussion of such points.

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[Extract.]

*The Marquess of Lansdowne to Sir F. Lascelles.*

No. 254.]

FOREIGN OFFICE, January 29, 1903.

The German ambassador spoke to me again this morning about Venezuelan affairs.

He told me that the German Government agreed with us in holding that the Venezuelan Government should be required to make a special arrangement with the three blockading powers, under which their claims to compensation would be satisfied apart from those of other powers. The German Government considered that 30 per cent of the revenues of the two ports should be set apart for this purpose alone.

I told his excellency that it seemed to me worthy of consideration whether, if a part of the customs revenue was appropriated, not for the satisfaction of the claims of all the creditor powers, but for that of the British, German, and Italian claims alone, we might not be content with rather less than the full 30 per cent referred to. It seemed to us that the allocation of an annual sum sufficient to extinguish our claims in, say, six years, might be enough for our purpose, and we had instructed Sir M. Herbert to discuss the question with his German and Italian colleagues.

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[Telegram.]

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 255.]

FOREIGN OFFICE, *January 30, 1903.*

With reference to my telegram of the 28th instant and to your excellency's telegram of the 29th instant, I have to recall that on the 27th ultimo the United States chargé d'affaires told me that the President was glad to be able to inform the Governments of Great Britain, Germany, Italy, and Venezuela that they had all in principle agreed to the proposal to refer the questions pending to the arbitration tribunal at The Hague. Although unable himself to act as arbitrator, the President was good enough to say that he would gladly hold himself at the disposition of the powers concerned if he could be of any further service in arranging the preliminaries of such a reference.

The President of Venezuela subsequently commissioned Mr. Bowen to proceed to Washington with a view of coming to an arrangement either for an immediate settlement of the claims, or for concerting preliminaries for their submission to the arbitration of the tribunal at The Hague.

There appears to be no doubt that the blockade could have been raised within a very few hours if Mr. Bowen had expressed a preference for the second of the above alternatives. The preliminary conditions on which Great Britain and Germany had insisted had been agreed to by President Castro, including those relative to the claims of the first line—i. e., claims arising, for the most part, out of overt acts of spoliation and violence—of which, during recent years, British subjects and Germans have been the victims.

His Majesty's Government were ready to accept in full settlement of the British share of these claims the sum of £5,500 in cash, while Germany would accept a similar amount in cash on condition of receiving priority as regards the sum of about £61,000, the balance of the German claims. Consequently, in addition to the conditions already agreed upon, only an immediate cash payment of £11,000 and prior security for £61,000 was required to make possible an immediate appeal to the tribunal at The Hague and the termination at the same time of the blockade. Mr. Bowen, however, preferred to make an attempt to bring about a direct settlement. His Majesty's Government have no desire to minimize the weight of his reasons for this, but the result has been that a state of affairs has unfortunately been prolonged which it was the earnest wish of His Majesty's Government to terminate.

It seems that Mr. Bowen has not thought it possible to come to any arrangement which would not place on precisely the same footing all the powers who have claims for compensation from Venezuela.

This is, in the opinion of His Majesty's Government, quite at variance with international practice and with principles of equity, and, except at the instance of some competent tribunal of arbitration, they could not assent to it.

It must be remembered that neither the President of the United States in his communications with His Majesty's Government, nor any of the blockading powers, nor, so far as I am aware, President Castro, have ever put forward a proposal of this nature.

The preferential treatment for which the blockading powers have asked is not, it must be further remembered, one by which either the resources at the disposal of the Venezuelan Government for the payment of the external debt would be exhausted, or by which the so-called "diplomatic debt," which amounts to only 5.2 per cent of the total customs revenue of Venezuela, would be interfered with.

The other powers will, without doubt, under the arrangements proposed by the blockading powers, be in a much more favorable position than they ever were before, and that, too, without incurring any of the trouble or expense involved in the naval operations which have been undertaken.

His Majesty's Government are of opinion, in these circumstances, that the method by which hostilities may be most expeditiously terminated would be by the reference of the question in dispute to the tribunal at The Hague, subject to the conditions already mentioned, unless, indeed, the President of the United States, in the interests of a prompt settlement, were to consent to decide the only point which seems to be an obstacle to the powers immediately interested arriving at a complete agreement. It is unnecessary to say that His Majesty's Government, in the event of the President consenting to adopt this



course, would, with feelings of the utmost gratification, accept his good offices. In the event of the President being unable to do so, His Majesty's Government hope that he will give his assistance, in accordance with the offer quoted above, with a view to arrange the preliminaries for a reference to the tribunal at The Hague, and thus enable the powers to put an end to the blockade at once.

I have communicated to the German and Italian ambassadors here the substance of this telegram, and you may inform your German and Italian colleagues of the purport of these instructions.

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[Telegram.]

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 256.]

FOREIGN OFFICE, *February 1, 1903.*

It is not the wish of His Majesty's Government to place any obstruction in the way of a reasonable arrangement between the Government of Venezuela and other powers. At the same time, they consider it essential that priority should be given to the first rank of claims of the blockading powers, and that provision should be made for the extinction, within a reasonable time, of the second rank of claims.

Subject to the fulfillment of these conditions, the terms which Venezuela may find herself able to offer to the other powers are of no concern to His Majesty's Government, even if as advantageous as those obtained by the latter; but, except as the result of arbitration, they can not assent to the doctrine that, in cases like the present, identic treatment should be accorded to belligerents and nonbelligerents.

An arrangement by which the claims of the blockading powers should be extinguished in six or seven years would, we believe, leave it possible for a similar settlement to be made with the other powers. Your excellency should make a further attempt, in concert with your German and Italian colleagues, to arrive at a settlement such as I have indicated before acting on the instructions contained in my telegram of the 30th ultimo.

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[Telegram.]

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 257.]

FOREIGN OFFICE, *February 2, 1903.*

His Majesty's Government are hoping shortly to learn from your excellency whether a settlement on the lines indicated in my telegram of yesterday is possible.

If not, they are prepared to entertain proposals in conformity with the policy laid down in my telegram of the 30th January.

Procedure might be as follows:

A protocol would be drawn up for signature at Washington, embodying the conditions which Mr. Bowen has already accepted, including those for the settlement of the first-rank claims.

We should then reserve for adjudication by the President of the United States, or, failing that, by the tribunal at The Hague, questions which arise out of the proposal for identic treatment of all the creditor powers first made to us on the 25th ultimo.

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[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received February 3).*

No. 258.]

WASHINGTON, *February 2, 1903.*

The substance of your telegram of the 1st instant was communicated by me, in the presence of my colleagues, to Mr. Bowen, who answered that he would, if possible, give me a reply to-morrow afternoon, after consulting the representatives of the neutral powers. He added, however, that he could not hold out any hope of the proposal being accepted.

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[Telegram.]

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 259.]

FOREIGN OFFICE, *February 3, 1903.*

In the event of its proving impossible to arrive at a settlement of the nature described in my telegram of the 1st instant, the procedure which we contemplate is that you and your colleagues should ascertain whether the President of the United States would consent to arbitrate. Your proposals would then be made to Mr. Bowen in accordance with the President's reply.

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[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received February 4).*

No. 260.]

WASHINGTON, *February 3, 1903.*

With reference to my telegram of yesterday, I have to state that late last night Mr. Bowen sent me a letter in which he stated that he

could not accept our proposals, and suggested a reference to the tribunal at The Hague of the question of priority.

I have asked Mr. Bowen if he had consulted the representatives of the neutral powers relative to our proposal of yesterday. In reply he stated that, as they held him to his promises of equal treatment, it would be useless to do so.

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[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received February 4).*

No. 261]

WASHINGTON, February 4, 1903.

To-day Mr. Bowen informed German representative that he was willing to propose to the powers that there should be no reference to The Hague, but that they should receive the total of 30 per cent of the customs for three months instead.

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[Telegram.]

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 262.]

FOREIGN OFFICE, February 4, 1903.

With regard to the proposal contained in your telegram of to-day, I should be glad to learn, as early as possible, whether the sum which Mr. Bowen offers is meant to meet first-line claims or whether the intention is that separate provision should be made for them.

As you are aware, the conditions laid down by Great Britain and Germany were unreservedly accepted by President Castro in his note received by Mr. Hay on the 8th ultimo. One of those conditions was that, in the case of first-line claims, compensation would be paid at once by the Venezuelan Government.

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[Telegram.]

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 263.]

FOREIGN OFFICE, February 4, 1903.

A settlement on the lines of my telegram of the 1st instant being now presumably unattainable, you should proceed, with regard to the points reserved for arbitration, in accordance with my telegram of the 3d.

A separate telegram is being sent to you which contains the draft of a protocol embodying the conditions which have already been accepted by Mr. Bowen.

[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received February 5).*

No. 264.]

WASHINGTON, *February 5, 1903.*

With regard to the inquiry contained in your telegram of the 4th instant, I am informed by the German chargé d'affaires that it is Mr. Bowen's intention that the first-rank claims should be met out of the total 30 per cent receipts for the first three months.

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[Telegram.]

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 265.]

FOREIGN OFFICE, *February 5, 1903.*

My telegram of the 4th instant.

Following is text of protocol in the form proposed by His Majesty's Government:

Whereas certain differences have arisen between Great Britain and the United States of Venezuela in connection with the claims of British subjects against the Venezuelan Government, the undersigned, his excellency the Right Hon. Sir Michael Henry Herbert, K. C. M. G., C. B., His Britannic Majesty's ambassador extraordinary and plenipotentiary to the United States of America, and Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela, have agreed as follows:

#### ARTICLE I.

The Venezuelan Government declare that they recognize in principle the justice of the claims which have been preferred by His Majesty's Government on behalf of British subjects.

#### ARTICLE II.

The Venezuelan Government will satisfy at once, by payment in cash or its equivalent, the claims of British subjects, which amount to about £5,500, arising out of the seizure and plundering of British vessels and the outrages on their crews, and the maltreatment and false imprisonment of British subjects.

#### ARTICLE III.

The British and Venezuelan Governments agree that the other British claims, including claims by British subjects other than those dealt with in Article VI hercof, and including those preferred by

the railway companies, shall, unless otherwise satisfied, be referred to a mixed commission constituted in the manner defined in Article IV of this protocol, and which shall examine the claims and decide upon the amount to be awarded in satisfaction of each claim.

The Venezuelan Government admit their liability in cases where the claim is for injury to, or wrongful seizure of, property, and consequently the questions which the mixed commission will have to decide in such cases will only be—

(a) Whether the injury took place, and whether the seizure was wrongful; and

(b) If so, what amount of compensation is due.

In other cases the claims shall be referred to the mixed commission without reserve.

#### ARTICLE IV.

The mixed commission shall consist of one British and one Venezuelan member. In each case where they come to an agreement their decision shall be final. In cases of disagreement, the claims shall be referred to the decision of an umpire nominated by the President of the United States of America.

#### ARTICLE V.

The Venezuelan Government being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in Article III and similar claims preferred by other governments, undertake to assign to A B by the —— day of ——, 190—, for this purpose, and to alienate to no other purpose, 30 per cent in monthly payments of the customs revenues of La Guaira and Puerto Cabello. In the case of failure to carry out this undertaking, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government, in respect of the above-mentioned claims, shall have been discharged.

Any question as to the distribution of the customs revenues so to be assigned, and as to the right of Great Britain, Germany, and Italy to a separate settlement of their claims, shall be determined, in default of arrangement, by the tribunal at The Hague by arbitration, to which any other power interested may make itself a party.

#### ARTICLE VI.

The Venezuelan Government further undertake to enter into a fresh arrangement respecting the external debt of Venezuela, with a view to the satisfaction of the claims of the bondholders. This arrangement shall include a definition of the sources from which the necessary payments are to be provided.

## ARTICLE VII.

The British and Venezuelan Governments agree that, inasmuch as it may be contended that the establishment of a blockade of Venezuelan ports by the British naval forces has, ipso facto, created a state of war between Great Britain and Venezuela, and that any treaty existing between the two countries has been thereby abrogated, it shall be recorded in an exchange of notes between the undersigned that the convention between Great Britain and Venezuela of the 29th October, 1834, which adopted and confirmed, *mutatis mutandis*, the treaty of the 18th April, 1825, between Great Britain and the State of Colombia, shall be deemed to be renewed and confirmed, or provisionally renewed and confirmed, pending the conclusion of a new treaty of amity and commerce.

## ARTICLE VIII.

Immediately upon the signature of this protocol arrangements will be made by His Majesty's Government, in concert with the Governments of Germany and Italy, to raise the blockade of the Venezuelan ports.

His Majesty's Government will be prepared to restore the vessels of the Venezuelan navy which have been seized, and further to release any other vessels captured under the Venezuelan flag, on receipt of a guaranty from the Venezuelan Government that they will hold His Majesty's Government indemnified in respect of any proceedings which might be taken against them by the owners of such ships or of goods on board them.

## ARTICLE IX.

The treaty of amity and commerce of the 29th October, 1834, having been confirmed in accordance with the terms of Article VII of this protocol, His Majesty's Government will be happy to renew diplomatic relations with the Government of Venezuela.

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[Telegram.]

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 266.]

FOREIGN OFFICE, *February 5, 1903.*

With reference to your telegram of the 5th instant, you were authorized to negotiate with Mr. Bowen only on the basis that the first-rank claims of Great Britain and Germany, amounting to about £72,000, should be excluded from arbitration and settled immediately.

President Castro has formally agreed to this arrangement.



We are now, as I understand, asked to accept, in satisfaction of the first-rank claims, about £53,000, which sum would be receivable some months hence, while as regards our other claims we should have to take our chance with other powers in a common settlement.

This offer is one which we consider it unadvisable to accept, and we should prefer to adhere to the procedure described in my telegram of the 2d instant. You should explain this to your colleagues.

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[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received February 6).*

No. 267.]

FOREIGN OFFICE, February 6, 1903.

In accordance with the instructions contained in your lordship's telegram of the 4th instant, I to-day made a communication to Mr. Hay. My colleagues were present. Mr. Hay promised to let me have an answer as soon as possible after consulting the President.

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[Extract.]

*The Marquess of Lansdowne to Sir F. Lascelles.*

No. 268.]

FOREIGN OFFICE, February 6, 1903.

Count Metternich being indisposed, Count Bernstorff called at this office on behalf of his excellency, and informed me that the German Government considered quite inadmissible the proposal put forward by Mr. Bowen, that the three powers should accept the total of 30 per cent of the Venezuelan customs for three months in satisfaction of their first-rank claims, and had instructed Baron Sternburg to join Sir M. Herbert in refusing it.

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[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received February 7).*

No. 269.]

WASHINGTON, February 7, 1903.

With reference to my telegram of yesterday I have to report that this morning I received a note from the Secretary of State, asking whether, if it were finally decided to refer the question of preferential treatment to The Hague, the blockade would come to an end when the protocol embodying the terms of reference was signed.

Subsequently Mr. Hay called at this embassy for a reply, and I

informed him, having consulted my colleagues previously, that I assumed this would be the case.

Mr. Hay then dictated to me the following statement:

The President is extremely anxious to be of all possible service in the amicable settlement of pending questions, but he sees no reason to change his views hitherto expressed that a reference to The Hague of the question referred to would be in many respects a more judicious and satisfactory conclusion of the matter than for him to accept the invitation of the powers, the honor and compliment of which he fully appreciates, and for which he is deeply grateful.

Please telegraph at once whether I am right in assuming that I should now submit draft protocol immediately to Mr. Bowen.

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[Telegram.]

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 270.]

FOREIGN OFFICE, *February 7, 1903.*

The President's inability to adjudicate is regretted by His Majesty's Government. Their intentions with regard to the cessation of the blockade are correctly expressed by your language.

I should wish you now to submit to Mr. Bowen the draft protocol.

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[Telegram.]

*Sir M. Herbert to the Marquess of Lansdowne—(Received February 14).*

No. 271.]

WASHINGTON, *February 13, 1903.*

The three protocols were signed at half-past 11 to-night.

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[Telegram.]

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 272.]

FOREIGN OFFICE, *February 14, 1903.*

Orders have been issued to raise the blockade.

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PART VI.

Cases of Great Britain, Germany, Italy, Belgium,  
France, the Netherlands, Spain,  
Sweden, and Norway.

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## CASE ON BEHALF OF GREAT BRITAIN.

### PREFACE.

On the 13th day of February, 1903, a protocol was signed at Washington by the representatives of Great Britain and Venezuela to provide for an amicable determination of a controversy which had arisen between the respective Governments concerning the settlement of certain claims of British subjects against the Venezuelan Government.

The full text of the protocol is set out in the appendix to this case. It stipulates for the immediate payment in cash of certain of the British claims, and in Article V makes provision for the payment of the remaining claims, in the following terms:

### ARTICLE V.

The Venezuelan Government being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in Article III and similar claims preferred by other Governments, undertake to assign to the British Government, commencing the 1st day of March, 1903, for this purpose, and to alienate to no other purpose, 30 per cent, in monthly payments, of the customs revenues of La Guaira and Puerto Cabello. In the case of failure to carry out this undertaking, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government, in respect of the above-mentioned claims, shall have been discharged.

Any question as to the distribution of the customs revenues so to be assigned, and as to the rights of Great Britain, Germany, and Italy to a separate settlement of their claims, shall be determined, in default of arrangement, by the tribunal at The Hague, to which any other power interested may appeal.

Pending the decision of The Hague Tribunal, the said 30 per cent of the receipts of the customs of the ports of La Guaira and Puerto Cabello are to be paid over to the representatives of the Bank of England at Caracas.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers; and the parties hereto agree that the tribunal in that case shall consider, in connection with the payment of the claims out of the 30 per cent, any preference or pledges of revenue enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution so that no power shall obtain preferential treatment, and its decision shall be final.

## ARTICLE II.

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the tribunal may determine.

## ARTICLE III.

The Emperor of Russia shall be invited to name and appoint from the members of the permanent court of The Hague three arbitrators, to constitute the tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement. None of the arbitrators so appointed shall be a subject or citizen of any of the signatory or creditor powers.

This tribunal shall meet on the 1st day of September, 1903, and shall render its decision within six months thereafter.

## ARTICLE IV.

The proceedings shall be carried on in the English language, but arguments may, with the permission of the tribunal, be made in any other language also.

Except as herein otherwise stipulated, the procedure shall be regulated by the convention of The Hague of the 29th July, 1899

## ARTICLE V.

The tribunal shall, subject to the general provision laid down in Article LVII of the international convention of the 29th July, 1899, also decide how, when, and by whom the costs of this arbitration shall be paid.

## ARTICLE VI.

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this agreement.

Done at Washington, this 7th day of May, 1903.

[L. s.]

MICHAEL H. HERBERT.

[L. s.]

HERBERT W. ROWEN.

It is understood that all the powers named in the first recital will be parties to the present proceedings.

The accompanying case, together with the documents, official correspondence, and other evidence on which the Government of Great Britain relies, is delivered pursuant to this agreement and to the procedure of this court.

## INTRODUCTORY STATEMENT.

In the month of December, 1902, the Governments of Great Britain, of Germany, and of Italy found it necessary, as will hereinafter more fully appear, to take forcible measures against the United States of Venezuela, in order to obtain redress for injuries inflicted on the persons and properties of their subjects, and to enforce payment of certain sums of money due from the Venezuelan Government to such subjects. The greater part of the Venezuelan navy was seized and detained, and the ports of Venezuela were placed under blockade against the ships of all nations.



One result of this action was that the Venezuelan Government agreed to pay a sum in cash in satisfaction of those claims which were put forward as of primary importance. This money has since been paid in accordance with the provision of the British protocol, to which reference has been made, and with similar provisions in protocols made with the Governments of Germany and Italy, respectively; and no question arises in regard to it.

The Venezuelan Government admitted the justice of the remaining claims and agreed to provide adequate security for their payment. For that purpose they were understood to offer to set aside a certain proportion of the receipts from the customs at the ports of La Guaira and Puerto Cabello to satisfy them. The total amount of these latter claims was calculated to be about £900,000, and the amount of the receipts proposed to be set aside to meet them was estimated by the representative of Venezuela at some £213,000 per annum. In the opinion of the Governments of the three powers this security was sufficient to meet their claims, and they were prepared to accept these terms.

At a late stage of the negotiations, however, His Majesty's Government were informed that the offer had been misunderstood, and that the Venezuelan Government had intended to propose that the customs receipts should be set aside to meet not only the claims of the blockading powers, but also the claims of all other powers, and that all claims were to rank *pari passu*.

These latter claims were believed to amount to over 1,000,000 sterling, and therefore if all claims were to rank equally the security offered to the blockading powers became obviously inadequate to provide for the liquidation of their claims within a reasonable time.

In the opinion of His Majesty's Government, the suggestion that all the powers were entitled to receive indentic treatment was at variance with international practice and with principles of equity. They pointed out that the other creditor powers had taken no steps to enforce their claims, that the offer of security had been procured solely by the action of the blockading powers, and that the latter powers alone had undertaken the trouble and incurred the loss incident to that action. Moreover, they were in a position to continue the blockade until their separate demands were complied with, while the other creditor powers were not then in a position to exert any such pressure on Venezuela.

His Majesty's Government, therefore, contended that the other creditor powers had no right to intervene in the settlement of the claims of the blockading powers, and that even apart from any agreement the blockading powers were entitled, as a matter of common fairness, to have adequate security provided for their claims, irre-

spective of any arrangement that might be made with the other creditors.

Mr. Bowen, the representative of the Venezuelan Government, declined, however, to accede to these representations or to offer any further security.

At this time an arrangement had already been arrived at in regard to all the other questions in dispute with Venezuela, and the three powers were unwilling to continue measures which necessarily caused considerable loss and inconvenience not only to Venezuela, but also to the shipping and commerce of neutral powers if any pacific solution could be found for this one remaining point of difference. Negotiations therefore ensued, and eventually the three powers consented that the point should be determined by this court.

The protocol already referred to was thereupon signed on behalf of His Majesty's Government, and similar documents were executed on behalf of the other blockading powers.

The state of war then terminated, the blockade was raised, and the captured vessels were subsequently restored.

The question, therefore, for the decision of this court is whether or not Great Britain, Germany, and Italy were entitled, in the circumstances existing at the time of the signing of the protocols, to preferential treatment in the payment of their claims against Venezuela out of the customs receipts aforesaid.

The court is further requested, whatever may be their decision on this point, to make provision for the distribution of the moneys received for the creditors in accordance with the terms of the reference to them contained in Article I of the agreement before referred to.

## **PARTIES TO THIS ARBITRATION AND THEIR CLAIMS.**

### **1. BLOCKADING POWERS.**

It has already been stated that, at the time of the events now in question, the claims of Great Britain, Germany, and Italy amounted to some £900,000. The Venezuelan Government have expressly recognized the justice of the British claims, subject to examination by a mixed commission, and it is not, therefore, necessary to deal with them in detail. It is sufficient to state that they are not secured in any way except under the arrangement now in question.

The "diplomatic debt," to which reference will presently be made, did originally include some British claims; but these have been since paid off, except as regards a claim for interest which is at present under consideration by the mixed commission at Caracas. Save in so far as this claim for interest may be held to be part of the diplomatic debt, the present British claims are not entitled to the security available for the discharge of that debt.

The claims of bondholders are not included in the claims now under consideration, for the Venezuelan Government have given a separate undertaking in regard to them, as will be seen on referring to article 6 of the British protocol.

## 2. OTHER CREDITOR POWERS.

The claims of these powers have not as yet been made known to His Majesty's Government, and they desire to reserve the right to comment on them by way of counter case and further argument as soon as the necessary particulars have been supplied. It is believed that some at least of these claims are already secured in other ways to the satisfaction of the creditor powers, and to these it may be convenient to refer generally in discussing the financial position of Venezuela, but any fuller examination must be postponed until complete information has been supplied.

On this point it is important to remember that under article 1 of the agreement for arbitration, in the event of preferential or separate treatment not being granted to the blockading powers, any preferences or pledges of revenue enjoyed by any of the creditor powers are to be taken into consideration by the court in determining the method of distribution.

## STATEMENT OF FACTS.

In order to enable the court to decide the question under arbitration it may be desired that they should have before them some information as to the financial position of Venezuela and an account of the action of the blockading powers which resulted in obtaining from Venezuela the security now in dispute. It is admitted that the other creditor powers took no part in that action, although they now seek to participate in the advantages resulting from it. But their attitude toward the blockading powers at the time is, it is submitted, material in deciding on their present contention, and it is proposed also to deal shortly with the facts bearing on that point.

### I. FINANCIAL CONDITION OF VENEZUELA.

It is the desire of His Majesty's Government to avoid any unnecessary criticism of the policy or finances of the United States of Venezuela, but some statement must be made as to the general financial position of that country.

It will be remembered that Venezuela seceded from the States of Colombia in 1830 and became herself an independent state. The first few years of her new existence were comparatively peaceful, but in 1846 there began a series of civil wars and revolutions, which have continued with but short periods of rest down to the present time.

These conditions have been fatal to financial stability. The resources of the country have been applied to other purposes than the discharge of liabilities, and it is not unfair to say that the settlement of debts has seldom occurred, except under pressure or threats of pressure of a forcible kind. It must be recorded, however, that in the opinion of President Castro, as expressed in his message to Congress in February, 1902, Venezuela only needs peace to reestablish the equilibrium of its treasury and to meet the demands on its credits, and that that equilibrium will be reached without any pressure on the part of its creditors.

*Revenue.*—The total revenues from all sources for the year 1901 appears from the official figures to have been 37,763,919 bolivars, or, say, £1,495,600.

At the time of the negotiations it was stated, on behalf of Venezuela, that the total customs receipts from all ports should produce an average yearly income of at least 30,000,000 bolivars, or, say, £1,188,118, and that the yearly yield of those from La Guaira and Puerto Cabello should amount to 18,000,000 bolivars, or £712,871. It appears, however, from the official figures, that for the year 1901 the total customs receipts from all sources amounted to 24,267,778 bolivars only, or £961,000, and the amounts paid over by the Venezuelan Government since the date of the protocol, as representing the 30 per cent of the receipts of the two ports, have been as follows:

|                   |          |
|-------------------|----------|
| For March.....    | £15, 976 |
| For April.....    | 12, 395  |
| For May.....      | 12, 337  |
| And for June..... | 11, 492  |

*External debt.*—This consists of two loans negotiated in 1881 and 1896, respectively. Of the first, the outstanding principal now amounts to £2,638,200, and the installments of debt service in arrear to £394,625. Of the second, the outstanding principal is £1,932,967, and the arrears, £501,390. These figures are to December, 1902.

A memorandum has been appended to this case, in which the details of these loans are given. It will be seen that the account of the 1881 loan concludes with the statement that during the years that have elapsed since Venezuela became an independent state, payment of the external debt contracted in England has been in default for nearly forty years, and that during the same period the Republic has compelled the bondholders to accept five arrangements, under each of which they have had to submit to large sacrifices of their rightful claims.

*Other foreign claims.*—The claims of other creditors have not fared better than those of the bondholders.

From 1835 to the present time Venezuela has been continually engaged in resisting the applications of the powers for payment

of the claims of their subjects. Sometimes she has been forced to yield by pressure or threats of pressure, but except on those occasions she appears to have made but little effort to liquidate her liabilities.

In 1872 the Governments of Great Britain, Germany, France, Denmark, Italy, Spain, the Netherlands, and the United States of America, joined in collective action to obtain security for their claims, and, in consequence, a law was passed in Venezuela in that year providing for the setting aside of a portion of the customs receipts for their discharge. The law provided for the disposal of the total customs receipts in the following manner: Sixty per cent for payment of the public services; 40 per cent for debt and development of the country. This 40 per cent was thus subdivided: Twenty-seven per cent for interior public debt; 27 per cent for exterior (bondholders); 33 per cent for development of the country, and 13 per cent for the recognized foreign claims.

The foreign claims secured in this way are known as the "diplomatic debt," and the 13 per cent of the 40 per cent is frequently referred to as the "13 per cent of the 40 unities." The security therefore for the diplomatic debt consists of 5.2 per cent of the customs receipts, and it is material to the purposes of this case to note that the receipts so charged are those of all the ports and not merely of La Guaira and Puerto Cabello. The further security now to be given by Venezuela does not in any way interfere with the existing security for the diplomatic debt. It is a charge on the customs receipts of those two ports only, subject to the prior charge of the 5.2 per cent allocated to that debt. It has already been stated that the British claims originally included in the diplomatic debt have since been paid off, with the possible exception of the claim for interest.

In 1885, and again in April, 1902, the Venezuelan Government entered into fresh agreements with that of France by which further French claims were included in the diplomatic debt, and secured in the same way.

## II.—ACTION OF THE BLOCKADING POWERS.

(a) *British grievances and demand for redress.*—For some years prior to the events now under review there had been considerable sums owing from the Venezuelan Government by way of compensation for injuries inflicted on the persons and property of British subjects in times of riot and insurrection in Venezuela. Further large sums were due to British subjects for services rendered and materials supplied to the Venezuelan Government or to their troops and in respect of default on various guaranties. It has already been stated that the holders of bonds of the external debt (of whom a large proportion were British subjects), had for some years received no pay-

ment on account of them, and that arrears of large amounts were owing.

Frequent representations had been made to the Venezuelan Government on these matters, but no redress could be obtained. The complaints of His Majesty's Government remained unheeded and no effort was made to comply with their demands.

In the years 1901 and 1902 the relations between the two powers became gravely strained owing to the unjustifiable action of the Venezuelan Government in seizing and confiscating certain vessels flying the British flag, plundering them of their contents, and maltreating their crews. This occurred on no less than six separate occasions, and in circumstances of great aggravation.

These aggressions reached their culminating point in the case of the British ship *Queen*. This vessel was seized and confiscated by a Venezuelan gunboat on the high seas on the 30th June, 1902, and the crew put on shore in a destitute condition.

No effort had been spared by His Majesty's minister at Caracas in each of the earlier cases to obtain an amicable settlement, but in none of them were any satisfactory explanations forthcoming. On hearing of the seizure of the *Queen*, His Majesty's Government made formal representations demanding redress, but with no better result. The Venezuelan Government declined even to take the matters complained of into consideration on the ground that they were entitled first to demand redress for injuries inflicted by a vessel called the *Ban Righ*. As regards this vessel, it may be explained that she was detained for some time under surveillance in British waters, and was only allowed to leave the port of London after examination of her papers and cargo, on receipt of an assurance from the Colombian representative at the Court of St. James that the vessel was intended for the service of his Government, and after ascertaining that no state of war existed between Colombia and Venezuela. There was, in those circumstances, no ground for detaining the vessel and the fullest explanations were afforded to the Venezuelan Government on the subject on more than one occasion. There was, therefore, nothing in this matter to justify the attitude of the Venezuelan Government.

His Majesty's Government were accordingly compelled to take further steps, and on the 7th December, 1902, an ultimatum was delivered on their behalf by Señor Baralt, the Venezuelan minister, which will be found in the appendix to this case. It will be observed that in regard to the particular claims now in question the proposal of His Majesty's Government was that both the amount to be paid and the security to be given for payment should be determined by a mixed commission.

These demands were rejected by the Venezuelan Government, and His Majesty's minister thereupon left Caracas.



It is understood that separate cases will be presented to this court on behalf of the German and Italian governments, and therefore it is not necessary in this case to refer to the complaints of those powers.

(*b*) *Measures of force.*—The particular steps taken to enforce the demands of the three powers are relevant to the question now before the court, in so far as they show the position of the blockading powers at the time of the agreement for arbitration.

On the 8th December, 1902, three Venezuelan ships of war were seized in the harbor of La Guaira, and by the 15th day of December the whole of the Venezuelan navy, with one unimportant exception, had either been captured or put out of action by the British and German squadrons.

On the 20th December, 1902, a blockade was declared by the three powers and was maintained until after the signing of the protocols, and a considerable number of Venezuelan trading ships were captured during that time. There were in all more than 60 of these vessels awaiting the adjudication of a prize court on the termination of hostilities.

Copies of the formal proclamations of His Majesty notifying the establishment and raising of the blockade have been appended to this case. It will be observed that the blockade was against the ships of all nations and involved the existence of a state of war.

(*c*) *Negotiations and their result.*—On the 13th December, 1902, His Majesty's Government received the first communication from the Venezuelan Government after the rupture of diplomatic relations. This was in the form of a letter from Mr. White, the United States chargé d'affaires in London, to Lord Lansdowne, forwarding a proposal of the Venezuelan Government that the manner of settling the claims for injuries to British and German subjects during the insurrections should be submitted to arbitration. It is noticeable that this proposal is limited to the claims of the two powers named (Italy did not become a party to the proceedings until a few days later) and the authority to act as arbitrator for Venezuela, given at that time by President Castro to Mr. Bowen, the United States minister at Caracas, shows that those claims were alone under consideration. The formal reply of His Majesty's Government was sent to Mr. White on the 23d December, 1902, and was by him communicated to President Castro. It expressly required as a condition of assenting to arbitration that "the security to be given by the Venezuelan Government and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation" should be determined by the arbitral tribunal.



On the 1st January, 1903, the answer of President Castro to these proposals was received. It was in the following terms:

I recognize, in principle, the claims which the allied powers have presented to Venezuela. They would already have been settled if it had not been that the civil war required all the attention and all the resources of the Government. To-day the Government bows to superior force, and desires to send Mr. Bowen to Washington at once to confer there with the representatives of the powers that have claims against Venezuela, in order to arrange either an immediate settlement of all the claims or the preliminaries for a reference to the tribunal of The Hague, or to an American republic to be selected by the allied powers and by the Government of Venezuela. Mr. Bowen would be duly authorized to settle the whole question as the representative of Venezuela.

The stipulation that the "allied powers" and the Government of Venezuela were to select the Tribunal of Arbitration makes it clear that the claims of the blockading powers were still alone in contemplation.

On the 5th January Lord Lansdowne, in a dispatch to Mr. White, asked for a definite assurance that the demands of the blockading powers as formulated in the memorandum of the 23d December, were accepted by President Castro, and on the 9th January he received the following reply from Mr. White:

AMERICAN EMBASSY,  
London, January 9, 1903.

MY LORD: I have the honor, in accordance with instructions from my Government, to communicate to your lordship the copy of a telegram which was received yesterday morning by Mr. Secretary Hay from Mr. Bowen, the American minister at Caracas:

"I have just received the following from President Castro:

" 'MR. MINISTER: The Venezuelan Government accepts the conditions of Great Britain and Germany, and requests you to go immediately to Washington for the purpose of conferring there with the diplomatic representatives of Great Britain, Germany, and with the diplomatic representatives of the other nations that have claims against Venezuela, and to arrange either an immediate settlement of said claims or the preliminaries for submitting them to arbitration.

" 'CIPRIANO CASTRO,  
" 'Constitutional President.'

" [Confidential.]

"If as I understand, Great Britain and Germany want to know what guarantee they will have, please inform them that it will be the custom-houses; consequently, I beg that the blockade be raised at once.

"BOWEN."

I am instructed, furthermore, to inform your lordship that Mr. Bowen will proceed to Washington immediately.

I have, etc.,

HENRY WHITE.

While this authority to Mr. Bowen extends to the settlement of the claim of other nations as well as those of the blockading powers the direct message from him clearly implies that the security of the

custom-houses would be given to the blockading powers in return for the raising of the blockade, and does not indicate that the security was to be shared with other claimants. That the proposal was so understood by Lord Lansdowne is clear from the instructions sent by him to the British ambassador on the 13th January, 1903. It will be seen that the ambassador was instructed to insist on a sufficient "cash payment or security which must be adequate, and which the Venezuelan Government must be bound not to alienate for any other purpose."

On the following day it was pointed out to Lord Lansdowne by the German ambassador that the authority given to Mr. Bowen in this note was wider than the original authority, and apparently contemplated that Mr. Bowen should confer not only with the representatives of the blockading powers, but also with those of other nations. Lord Lansdowne declined to enter into any discussion of the claims of other powers, and replied, as will be seen on reference to the appendix, that it seemed to him that the blockading powers stood on an entirely different footing from the rest, and that in his view it was impossible for the blockading powers to allow their representatives to take part in a general discussion at which a number of other powers would also be represented; and on the 16th January he instructed the British ambassador at Washington not to join in a general discussion with other powers as to the questions at issue with Venezuela, and to make it clear to Mr. Bowen that the British ambassador was authorized to discuss with him only the British claims and the proposals which he might offer for their liquidation.

Mr. Bowen reached Washington on the 20th January, and immediately requested that the blockade should be raised, but this was refused until the conditions required by His Majesty's Government were fulfilled; and on the 23d January Sir M. Herbert was able to inform Lord Lansdowne that Mr. Bowen accepted without reserve the conditions laid down by His Majesty's Government.

Among the most important of those conditions was one that, failing immediate payment, adequate security must be given for the claims now in question. The acceptance of this condition, therefore, amounted to an express agreement between Great Britain and Venezuela that security of adequate amount should be given for the British claims.

As to the specific security, Mr. Bowen proposed that 30 per cent of the receipts of the custom-houses at Puerto Cabello and La Guaira should be allocated each month to the payment of these claims, "until the entire foreign debt is paid," and explained that the 30 per cent proposed was in addition to the 13 per cent of the 40 per cent already appropriated to the payment of the diplomatic debt.

The terms of this proposal raised a doubt as to whether it was intended that the whole of the creditor powers should share in the security, and inquiries were accordingly addressed by Lord Lansdowne to Sir M. Herbert asking whether that was so, and if so, whether the security for the blockading powers would still be adequate.

From the replies received it became clear that the proposal of Mr. Bowen was that all claimants should share alike, and that, notwithstanding the unconditional acceptance of the demand of His Majesty's Government that adequate security should be provided for the claims of the blockading powers, the share available for that purpose would be wholly inadequate. If the claims of all creditor powers were admitted on equal terms, the amount available to secure the claims of the blockading powers, according to the estimates then given, would be reduced from £213,000 to about £94,000 per annum.

In these circumstances, His Majesty's Government declined to accept the proposal. Lord Lansdowne pointed out that it was an entirely new departure, and that such a suggestion had not been put forward at any time by the President of the United States nor by President Castro. The basis of negotiations from the first had been the settlement of the claims of the blockading powers, and no question as to the other powers had been raised up to that moment.

It is essential in considering the force of this contention, to keep in mind the position of the parties at this time. The whole object of the negotiations from first to last had been to free Venezuela from the pressure of the blockade—a pressure which was imposed and maintained exclusively by the blockading powers, which they alone could cause to continue or cease as they pleased. They had already captured and held the whole effective portion of the Venezuelan navy; they had already in their hands a large number of Venezuelan trading vessels; the blockade had been maintained for more than six weeks, and its pressure was felt more severely day by day. On the other hand, the other creditor powers were putting no pressure on Venezuela; there was no immediate reason for dealing with their claims; they had nothing to give in exchange for concessions from that country. The dispute was confined entirely to the blockading powers and to Venezuela, and the other creditor powers had abstained from any participation in it. There could be no reason, therefore, why the other powers should be consulted in the settlement, or why claims which they had refrained from supporting by action, or indeed, so far as is known to His Majesty's Government, by any other means, should be in any way coupled with the claims of the blockading powers.

Mr. Bowen, however, felt himself unable to accept this view, and he insisted on introducing the claims of other powers.

In face of this refusal the obvious course for the blockading powers would have been to continue the blockade until their demands were complied with, and they might thus have obtained any security that they desired. But every other point in dispute had already been arranged, and they were unwilling, as has been said, to continue operations which necessarily caused considerable loss not only to Venezuela, but also to the trade and shipping of neutral powers, if any other solution could be found. Nor did it seem possible that in that situation then existing the other creditor powers could intervene as a matter of right.

For these reasons the blockading powers elected not to press their demands further by force, but were content to leave the question to the determination of this court.

The protocols, of which that signed on behalf of His Majesty's Government is appended to this case, were then made and hostilities ceased. It has already been stated that the vessels of war and the merchant shipping captured from Venezuela were restored after the signing of the protocols.

### III.—ATTITUDE OF THE OTHER CREDITOR POWERS.

The purpose of the blockading powers was avowedly to obtain satisfaction for their own claims, and for their own claims alone. It was open to the other creditor powers, if they had objected to this action, either to protest against it as soon as it came to their knowledge or to offer to take part in it themselves, and so to secure their own share in the results. But no one of the powers who now ask to participate in the security obtained from Venezuela solely as the result of the belligerent operations of Great Britain, Germany, and Italy either protested against the action of those powers or offered to join in it. They one and all acquiesced, some expressly in terms, others impliedly by their inaction, and did no more.

On the 11th November, 1902, Lord Lansdowne instructed the British ambassador at Washington to make known the intentions of His Majesty's Government to the Government of the United States. Mr. Hay, in reply, while making no objection, made no proposal to join in the contemplated action.

On the 26th November a similar communication was made by Lord Lansdowne to the French ambassador who, in reply, pointed out that the French claims were secured as part of the diplomatic debt by the "13 per cent of the 40 unities," and protested against any action which would injure that security. But he made no protest on other grounds.

On the 14th December the Belgian minister made a similar reservation.

It has already been demonstrated that the giving of the security now in question does not affect the "13 per cent of the 40 unities," to which alone those reservations related.

It is true that the French Government subsequently intimated that the Governments of the United States, Spain, and Belgium had decided to demand from Venezuela the most-favored-nation treatment for the settlement of all their claims, and that they themselves intended to claim a method of settlement and payment equally favorable with that obtained by any other power. But it will be observed that this claim, if in fact it ever was made, was not put forward until after the seizure of the Venezuelan fleet, and that it was a claim against Venezuela and not against the blockading powers. Moreover, it is clear that a claim for most-favored-nation treatment in this matter did not involve a demand to share in any security obtained by the blockading powers, but amounted only to an intimation that Venezuela would be required to provide a similar security for the claimant. No such claim was ever communicated to His Majesty's Government, and they had no notice of any kind of it except that conveyed indirectly by the French Government in the memorandum referred to.

#### ARGUMENT.

The material facts have now been stated for the information of the court, and the question arises for discussion whether, in the circumstances existing before and at the date of the protocols of the 13th February, 1903, the carrying out of which was provided for by the subsequent agreement of the 7th May, the other creditor powers could claim, as of right, to step in between Venezuela and the blockading powers and to share in this security to the prejudice of those powers by whose efforts it was obtained. Venezuela has asserted that such a right exists, and that she is bound to give effect to it. If that view is accepted by the court, then this security must be shared by all her creditors; if, on the other hand, the court decides that there is no such right, then it is submitted that the blockading powers are entitled to preferential treatment.

It is to be observed at the outset that the claims of the other creditor powers had no priority—that is to say, they were in no better position in regard to Venezuela than the claims of the blockading powers before action was taken to enforce them. In effect, therefore, the contention on behalf of the other creditor powers, if it be put forward as a matter of legal right, must come to this, that, at the conclusion of any war, a neutral is entitled to interpose between the successful and the unsuccessful belligerent, and to demand, as of right, to share in the fruits of the victory on the ground that he too had claims

against the vanquished, although he took no steps to enforce those claims, and had not protested against the action taken by the other belligerent to enforce his claims. Such a proposition can, it is certain, find no precedent in the history of nations. Third powers may attempt to intervene in such cases from reasons of policy, but they can not base their claims on any right acquired by law. They can not come before this court and successfully argue that a right such as this is recognized by the law of nations. The same observations apply equally to those methods stopping short of war, by which international demands are commonly enforced. Reprisals, embargo, and other like measures of coercion are processes sanctioned by the usage of nations to compel compliance with demands. But they are processes put in force by individual nations for their own purposes; they confer no advantages and no rights on third parties.

If the matter be treated as one of equity and common fairness, the proposition of the other creditor powers becomes even less tenable. This security has been obtained by the efforts of the blockading powers alone; they alone have borne the trouble and expense incurred in obtaining it. Whether that trouble and expense be greater or less matters not; for the principle, if it be a principle, must apply equally in cases where blood and treasure have been sacrificed, ships sunk, and armies annihilated, as in cases where hostilities have been comparatively innocuous. On what ground of fairness or of equity can it be said that a power who has stood by and done nothing can have any claim to reap the advantage obtained by the labors and losses of the other?

Even if the principles of private law be applied they afford no better support to this contention. This is not a case analogous to bankruptcy, to *cessio bonorum* or *venditio bonorum*, or to other like systems, by which the estate of an insolvent debtor is divided equally among his creditors. Venezuela is not insolvent. There is no suggestion that her assets are insufficient to meet her liabilities. Moreover, the essential basis of all bankruptcy systems is the surrender by the debtor of his whole estate. Venezuela has not surrendered her whole estate. She has given a comparatively small charge over a portion, and a portion only, of her customs receipts. The rest of her customs revenue, and the whole of her revenue from other sources, remains unaffected. The case is indeed analogous to that of a creditor who has taken particular property of a debtor in execution and is therefore entitled to be paid out of the proceeds in priority to all other claimants. The blockading powers had, in effect, taken the 30 per cent of the customs in execution and are entitled to priority in the distribution of the proceeds. Nor must it be forgotten that at the time of the signing of the protocols they did hold actual security in the shape of the Venezuelan navy.



A further analogy from private law in favor of the argument of the blockading powers may be found in the principle that a creditor who has spent money in preserving an asset of the common debtor is entitled to a prior charge on that asset. Such certainly was the principle which is the foundation of the opinion pronounced by Ulpian. According to that opinion even a creditor later in date was preferred to an earlier creditor if the advance made by the later creditor was made for the purpose of securing the safety of the subject of the earlier charge.

Dig. XX, Tit. IV. 5. "Ulpianus, Libro III. Disputationum.—Interdum posterior potior est priore, utputa si in rem istam conservandam impensum est, quod sequens credidit, veluti si navis fuit obligata, et ad armandam eam rem vel reficiendam ego credidero."

6. "Idem, Libro LXXIII, ad Edictum.—Huius enim pecunia salvam fecit totius pignoris causam: quod poterit quis admittere, et si in cibaria nautarum fuerit creditum, sine quibus navis salva pervenire non poterat. § 1. Item si quis in merces sibi obligatas crediderit, vel ut salvæ fiant, vel ut naulum exsolvatur, potentior erit, licet posterior sit; nam et ipsum naulum potentius est. § 2. Tantundem dicetur, et si merces horreorum, vel aræ, vel vecturæ iumentorum debetur; nam et hic potentior erit."

A similar principle is recognized in the jurisprudence of all civilized nations. For instance, in the well-known case of bottomry and hypothecation, and in the case of salvage, a similar principle is applied by the general law maritime, which is part of the law of nations. It is well established that in the former case a later creditor is preferred to an earlier on the ground that the safety of the ship has been secured by his advance; and in the latter case the salvor's claim is preferred to others even though they be prior in time, and even though they constitute actual charges upon the ship.

In the present case the security, to the distribution of which this arbitration relates, has been realized solely by the exertions and at the expense of the blockading powers. These powers have waived any claim to be paid out of that security, or by Venezuela, the expenses which they incurred in getting this security. It is submitted that under these circumstances it would be manifestly inconsistent with equity and justice that the other creditor powers who have incurred no expense, and who took no part in getting this security, should be permitted to share in it in competition with those to whose exertions its very existence is due.

For these reasons it is submitted that the claim of the blockading powers to preferential treatment is established whether the matter be looked at by the light of the law or usage of nations, or according to any analogies that may be afforded by private law.



It is not at present known to His Majesty's Government on what grounds the claims of the other creditor powers to share in the proceeds of the security of the customs of La Guaira and Puerto Cabello is based. These grounds will no doubt be disclosed in the case to be presented on behalf of the other creditor powers and Venezuela. His Majesty's Government therefore reserve further discussion on the arguments as to preferential treatment until the grounds on which is based the claim of the other creditor powers shall have been so disclosed.

It is believed, however, by his Majesty's Government that the other creditor powers of some of them have obtained from Venezuela specific securities for their claims. The particulars of such securities are not known to His Majesty's Government, and it is submitted to the tribunal that a full disclosure of these securities ought to be made by Venezuela and by the other creditor powers. If the court should arrive at the conclusion that the blockading powers are not entitled to priority, it will become necessary to decide the question of distribution according to article 1 of the agreement of reference or according to the well-established principle of equity in marshaling securities. This principle is that if one party has a lien on or interest in two funds for a debt and another party has a lien on or an interest in one only of the funds for another debt, the latter has a right in equity to compel the former to resort to the other fund, in the first instance if that course is necessary for the satisfaction of the claims of both parties. It follows, therefore, that those powers whose claims are secured by other securities than the customs revenues of La Guaira and Puerto Cabello would only be entitled to a charge on the 30 per cent for so much as is not secured by other securities. The question of distribution can therefore only be dealt with by the light of a full knowledge of these other securities and of the use which it is proposed to make of them. Further treatment of this subject is reserved for the counter case.

#### CONCLUSION.

It is therefore submitted that the claim of the other creditor powers to share in the security obtained from Venezuela by the action of the blockading powers is not well founded, and that any claim by them to share at all in that security must be postponed to the claims of the blockading powers.

Because—

1. The Venezuelan Government expressly accepted the condition insisted on from first to last by His Majesty's Government that adequate security should be provided for the satisfaction of the claims of the blockading powers. The reference to this court was made on

the basis of that condition, and to that condition it is submitted the court should give effect.

2. The other creditor powers took no part in the controversy between the blockading powers and the United States of Venezuela, and can not claim as a matter of right to take any part in the settlement of that controversy.

3. The other creditor powers purposely abstained from intervening in the action of the blockading powers, and can not therefore claim as a matter of fairness or equity to share in the results obtained by that action.

4. The security in question would not have been obtained at all had it not been for the action of the blockading powers, and therefore the blockading powers are entitled to a prior charge on that security.

5. In the circumstances existing at the time of the signing of the protocols the blockading powers were entitled to preferential and separate treatment.

## APPENDIX TO THE CASE OF GREAT BRITAIN.

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No. 1.]

*Protocol between the United Kingdom and the United States of Venezuela relating to the settlement of the British claims and other matters.*

Whereas certain differences have arisen between Great Britain and the United States of Venezuela in connection with the claims of British subjects against the Venezuelan Government, the undersigned, his excellency the Right Honorable Sir Michael H. Herbert, K. C. M. G., C. B., His Britannic Majesty's ambassador extraordinary and plenipotentiary to the United States of America, and Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela, have agreed as follows:

### ARTICLE I.

The Venezuelan Government declare that they recognize in principle the justice of the claims which have been preferred by His Majesty's Government on behalf of British subjects.

### ARTICLE II.

The Venezuelan Government will satisfy at once by payment in cash or its equivalent the claims of British subjects, which amount to about 5,500%, arising out of the seizure and plundering of British vessels and the outrages on their crews, and the maltreatment and false imprisonment of British subjects.

### ARTICLE III.

The British and Venezuelan Governments agree that the other British claims, including claims by British subjects other than those dealt with in Article VI hereof, and including those preferred by the railway companies, shall, unless otherwise satisfied, be referred to a mixed commission constituted in the manner defined in Article IV of this protocol, and which shall examine the claims and decide upon the amount to be awarded in satisfaction of each claim.

The Venezuelan Government admit their liability in cases where the claim is for injury to, or wrongful seizure of, property, and, consequently, the questions which the mixed commission will have to decide in such cases will only be—

(a) Whether the injury took place and whether the seizure was wrongful; and

(b) If so, what amount of compensation is due.

In other cases the claims shall be referred to the mixed commission without reservation.

#### ARTICLE IV.

The mixed commission shall consist of one British member and one Venezuelan member. In each case where they come to an agreement their decision shall be final. In cases of disagreement the claims shall be referred to the decision of an umpire nominated by the President of the United States of America.

#### ARTICLE V.

The Venezuelan Government being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in Article III, and similar claims preferred by other Governments, undertake to assign to the British Government, commencing the 1st day of March, 1903, for this purpose, and to alienate to no other purpose, 30 per cent, in monthly payments, of the customs revenues of La Guaira and Puerto Cabello. In the case of failure to carry out this undertaking, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government in respect of the above-mentioned claims shall have been discharged.

Any question as to the distribution of the customs revenues so to be assigned, and as to the rights of Great Britain, Germany, and Italy to a separate settlement of their claims, shall be determined, in default of arrangement, by the tribunal at The Hague, to which any other power interested may appeal.

Pending the decision of The Hague Tribunal, the said 30 per cent of the receipts of the customs of the ports of La Guaira and Puerto Cabello are to be paid over to the representatives of the Bank of England at Caracas.

#### ARTICLE VI.

The Venezuelan Government further undertake to enter into a fresh arrangement respecting the external debt of Venezuela, with a view to the satisfaction of the claims of the bondholders. This arrangement shall include a definition of the sources from which the necessary payments are to be provided.

## ARTICLE VII.

The British and Venezuelan Governments agree that, inasmuch as it may be contended that the establishment of a blockade of Venezuelan ports by the British naval forces has, ipso facto, created a state of war between Great Britain and Venezuela, and that any treaty existing between the two countries has been thereby abrogated, it shall be recorded in an exchange of notes between the undersigned that the convention between Great Britain and Venezuela of the 29th October, 1834, which adopted and confirmed, *mutatis mutandis*, the treaty of the 18th April, 1825, between Great Britain and the State of Colombia, shall be deemed to be renewed and confirmed, or provisionally renewed and confirmed, pending conclusion of a new treaty of amity and commerce.

## ARTICLE VIII.

Immediately upon the signature of this protocol arrangements will be made by His Majesty's Government, in concert with the Governments of Germany and Italy, to raise the blockade of the Venezuelan ports.

His Majesty's Government will be prepared to restore the vessels of the Venezuelan navy which have been seized, and further to release any other vessels captured under the Venezuelan flag, on the receipt of a guarantee from the Venezuelan Government that they will hold His Majesty's Government indemnified in respect of any proceedings which might be taken against them by the owners of such ships or of goods on board them.

## ARTICLE IX.

The treaty of amity and commerce of the 29th October, 1834, having been confirmed in accordance with the terms of Article VII of this protocol, His Majesty's Government will be happy to renew diplomatic relations with the Government of Venezuela.

Done in duplicate at Washington, this 13th day of February, 1903.

|         |          |                     |
|---------|----------|---------------------|
| [L. S.] | (Signed) | MICHAEL H. HERBERT. |
| [L. S.] | (Signed) | HERBERT W. BOWEN.   |

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*Memoranda on Venezuelan loans of 1881 and 1886.*

No. 2.]

LOAN OF 1881.

In 1834 Venezuela became responsible for 28½ per cent of the original Colombian debt, which was contracted in England to carry on the war of independence against Spain. The amount of debt so assumed

by Venezuela was £1,888,396 principal, and £906,430 arrears of interest. Total £2,794,826.

Until 1841 no interest was paid on this debt. In that year a settlement was made, by which the bondholders submitted to considerable sacrifices.

In 1847 default occurred. In 1859 an arrangement was made, when further concessions were demanded of the bondholders. Default again took place in the following year.

In 1862 the arrears of interest under the 1859 arrangement were funded, and a new loan of £1,000,000 was issued.

In 1864 a further loan for £1,500,000 was floated. In the same year payments on the 1859 and 1862 loans were discontinued, and in 1867 default was made on the 1864 loan. With the exception of a payment of 3s. in the pound on the coupons in 1876–1878, the whole of the loans remained in default until 1881. In that year the loans of 1859, 1862, and 1864 were converted into a new consolidated debt, the bondholders once more having to submit to large reductions.

Interest on the consolidated debt was reduced to 3 per cent until the unification of the external and internal debts could be effected, when it was to be increased to 4 per cent. Venezuela, however, raised various difficulties in the way of the unification being carried out, and has never paid more than 3 per cent.

In 1897 default again took place; since then a small amount has been remitted at irregular intervals sufficient to pay off the balance of the coupon due February, 1898, and half the coupon due August, 1898.

At the present time the amount of principal outstanding is 66,614,550 bolivars, or, say, £2,638,200, and the amount due for the service of the debt in arrear up to the 31st December, 1902, 56 monthly installments of 177,933.58 bolivars, equivalent to 9,964,280 bolivars, or, say, £394,625.

During the sixty-nine years that have elapsed since Venezuela became an independent State, it may be reckoned that the external debt contracted in England has been in default for nearly forty years, and that during the same period the Republic has compelled the bondholders to accept five arrangements, under each of which they have had to submit to large sacrifices of their rightful claims.

#### 5 PER CENT LOAN OF 1896.

This loan was for 50,000,000 bolivars, or, say, £1,980,198. It was issued through the Disconto Gesellschaft, of Berlin, for the purpose of settling the railway guaranties in arrear and the redemption of the same guaranties in the future, the acquisition of some of the railways by the Government, and the completion of the Central Railway.

The amount of bonds issued to English companies was 6,800,000



bolivars, or, say, £269,307. These companies had to submit to large reductions of their claims.

The service of the loan went into default in 1897. Between that date and 1901 some small payments were made by the Venezuelan Government, which were sufficient to discharge the June, 1898, coupon, and 56 per cent of the December, 1898, coupon and sinking fund.

The amount of the principal outstanding is 48,807,440 bolivars, or, say, £1,932,967, and the amount of the interest and sinking fund in arrear to December 31, 1902, is 12,660,097 bolivars, or, say, £501,390.

The loan bears 5 per cent interest, and 1 per cent accumulative sinking fund, and is secured on a sufficient amount of the customs revenues of the Republic to provide 3,000,000 bolivars annually. No other loan enjoying equal or better rights can be issued by Venezuela until the 1896 loan has been entirely repaid.

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*Memorandum on existing causes of complaint against Venezuela.*

No. 3.]

CASE OF SEIZURES BY THE VENEZUELAN GUNBOAT AUGUSTO.

It appears from the sworn evidence of 10 witnesses examined before the attorney-general of Trinidad that on the 21st January, 1901, four boats, three Venezuelan and one belonging to a British subject, were at Patos Island waiting for the tide on their way to Port of Spain laden with cocoa. The boats were of the usual class which trade between Port of Spain and the neighboring ports of Venezuela, and appear on this occasion to have been simply carrying cargo and passengers in the ordinary way to Port of Spain.

There were some 25 persons altogether in the boat, sailors and passengers, including several British subjects.

On the morning of the 22d the Venezuelan gunboat *Augusto* appeared off the island, and, after remaining close inshore for some hours, summoned the people who had landed from the vessels above referred to to come on board the *Augusto*. This demand not being complied with, a force of some 20 armed Venezuelans, under Colonel Torres, was landed on Patos, and proceeded to remove the boats and collect their cargoes. About half the passengers and crew of the trading boats were removed on board the *Augusto*, the remainder taking refuge in the woods, where they were left without food, water, or means of leaving the island.

Representations were at once made by His Majesty's chargé d'affaires at Caracas, with reference to this reported seizure and deportation of British subjects. A stringent inquiry was demanded, but, so

far as His Majesty's Government are aware, no attention was paid to this demand.

#### CASE OF THE SEA HORSE.

On the 26th February, 1901, John Craig, a fisherman of Trinidad, a British subject, proceeded to Patos in pursuance of his calling in his boat, the *Sea Horse*. Having beached his boat and landed with his boat's crew on the island, he was followed by the crew of a Venezuelan guardacosta, armed with cutlasses and rifles, who beat one of his companions, fired at another, who, however, escaped unhurt, and finally seized the boat and its contents, leaving the men on the island without food or water. They were fortunately relieved by a passing boat two days later and taken back to Port of Spain.

In this case a strong remonstrance was addressed to the Venezuelan Government in respect of the landing of an armed force on British territory, and the assault on the persons and seizure of the property of British subjects.

On the same occasion the *Buena Fe*, a boat belonging to a Venezuelan citizen, resident in Trinidad, was seized under similar circumstances, and although the owner's nationality precluded support of any claim on his part, the interference with the boatmen and the seizure of the property on Patos Island constituted a grave violation of British territory.

The statements of facts were in each case supported by sworn declarations. The Venezuelan Government justified the action of their guardacosta by declaring that they considered Patos as belonging to Venezuela, and by stating that the *Sea Horse* was thought to be engaged in smuggling. No proof of this was, however, adduced, nor did there appear to be any reasonable ground for the assumption. This plea was subsequently amended by the further statement that the *Sea Horse* was suspected of landing arms, but the Venezuelan version of the fact proves that she never touched the coast, and could not therefore have landed arms, while it was not even alleged that, after being chased to Patos, where she was seized, she had any arms on board.

The explanations offered after six months' correspondence were wholly unsatisfactory, and no redress was offered for an act which, even according to the account of the Venezuelan Government, and, if their assumed possession of the island was allowed, was one of unjustifiable violence.

#### CASE OF THE MARÍA TERESA.

In January, 1901, the sloop *María Teresa*, the property of a British subject, but flying the Venezuelan flag, was, when about to leave the Venezuelan port of Guiria, compelled to heave to and ordered to proceed to Trinidad, instead of to her destination at Yrapa, on

the mainland. On the *María Teresa* proceeding to follow these instructions, she was boarded by a boat from the *Miranda*, which took off the master and two sailors, and, after seizing the property on board the *María Teresa*, set on fire and completely destroyed her.

The Venezuelan Government, in justification of the *Miranda's* action, contended that the owner and master of the sloop had been actively engaged in assisting the revolutionists. Although the treatment of the British subjects on board the sloop afforded ground for remonstrance, His Majesty's Government, in view of these statements, which were not, however, supported by proof, forebore to press the matter strongly, as there was some evidence that the vessel had been in communication with if not in the employ of the revolutionary party. Further inquiry and explanations were promised.

#### CASE OF THE PASTOR.

The case of the *Pastor*, however, afforded still stronger ground for protest. On the 30th August last year the Venezuelan-owned sloop *Pastor* left Port of Spain with a cargo of goods and with three passengers, one of whom at least was a British subject.

There is some evidence to show that the *Pastor*, in conjunction with three other boats of Venezuelan nationality, was engaged on a smuggling venture. On her arrival at Patos Bay the Venezuelan revenue boat *Totumo* appeared on the scene, and, after examining the papers and cargo of the *Pastor*, landed some of her crew on the island, seized and carried on board goods which had been there deposited by the *Pastor*, and took the men engaged in the expedition as prisoners. She subsequently fired on the *Pastor* when that vessel was still in British waters.

The correspondence exchanged with the Venezuelan Government with reference to this incident made it clear that they were determined to consider and to treat Patos as belonging to the Republic. In these circumstances it was thought expedient to record a formal protest against this renewed and gross violation of British territorial waters by a Venezuelan gunboat—which the facts that the *Pastor* was a Venezuelan vessel and had infringed the customs regulations of Trinidad were not held in any way to justify.

His Majesty's minister accordingly made a strong remonstrance with reference to this incident, but the Venezuelan Government stated that they could not make any investigation with regard to the violation of British territory, as they considered Patos Island, on which the violation of territory occurred, as their own legitimate possession.

#### CASE OF THE INDIANA.

A further case of the violation of British rights occurred in January last, in the seizure and detention of the British owned and reg-

istered sloop *Indiana* in the river Barima, within Venezuelan territory, the waters of which are, by the terms of the Anglo-Venezuelan Boundary Award, open to the navigation of all nations in time of peace.

In this instance the vessel, which carried only a cargo of empty barrels used for the conveyance of corn to the market of Georgetown, was suspected of smuggling, seized and carried into the Venezuelan port of Amakuru, the captain escaping in a native canoe.

There was no evidence to support this charge of smuggling, and the colonial authorities, to whom the case was reported, point out that the confiscation of the vessel was an excessively severe penalty for any infraction of the customs laws, if such were deemed to have occurred.

The representations made to the Venezuelan Government have hitherto failed to elicit any explanation.

#### CASE OF THE *IN TIME*.

A more recent instance of a similar character is the destruction of the British vessel *In Time* by the Venezuelan gunboat *General Crespo* in the Venezuelan harbor of Pedernales on or about the 1st May last.

It appears that on the arrival of the gunboat *General Crespo* in Pedernales orders were given to seize all craft in port, and this was done. No provocation or justification of this order has been assigned. The *In Time* was then fired on by the gunboat, and an armed party from the *Crespo* boarded her and broke her up. She subsequently drifted down the river and sank.

In connection with this case, His Majesty's minister was instructed to inform the Venezuelan Government that unless they could disprove the reports received as to the destruction of this vessel His Majesty's Government might be obliged to cease extending the hospitality of British ports to Venezuelan cruisers.

The Venezuelan Government have protested against the "menacing tone" of this communication, which they consider "inadmissible," even as a simple notification.

#### CASE OF THE *QUEEN*.

The seizure on the high seas of the British ship *Queen*, of Grenada, reported by His Majesty's minister in June, is the latest instance of such unwarrantable interference.

In this case it appears, from sworn evidence, that the vessel, while on her voyage from Grenada to Trinidad, in ballast, was overhauled by the Venezuelan gunboat *Restaurador* some 20 miles off Curapano; that after the seizure the *Queen* was towed into the Venezuelan port of Porlamar, there stripped of her sails and papers, and finally con-

fiscated, on a mere suspicion of having carried a cargo of arms to Venezuela, the crew being put on shore and left destitute.

The master and one of the crew, after remaining there twenty-seven days, obtained a passage on a Venezuelan sloop and found their way to La Guaira, where they reported themselves to the British vice-consul.

The facts having been brought to the knowledge of His Majesty's minister, he at once addressed a representation to the minister for foreign affairs, and requested "to be informed what steps the Venezuelan Government intended to take with reference to this charge, in which more than one important question was involved."

The action of the Venezuelan consul at Trinidad, Señor Figueredo, has also given rise to grave complaints with reference to his issuing irregular clearances, exaction of improper fees and charges, and assumption of unwarranted authority by the collection of customs dues for Venezuela in Trinidad.

He has, further, in some cases refused to accept dispatch of vessels for Venezuela, on the ground that they belonged to persons who were not acceptable to the Venezuelan Government, and in others is stated to have placed every sort of hindrance in the way of the dispatch of vessels, thus seriously prejudicing the trade of British subjects at Trinidad.

Monsieur Figueredo's conduct was brought to notice especially in connection with his refusal to dispatch the British registered lighter *Euterpe*, belonging to the Compagnie Générale des Asphaltes de France, when he informed the company that if the vessel was otherwise dispatched she would be seized or sunk as soon as she was outside British waters.

His Majesty's minister has been instructed to protest against Monsieur Figueredo's action, and to inform the Venezuelan Government that unless satisfactory assurances were forthcoming no exequatur would be issued to their consul. Of this communication no notice has been taken.

Besides these specific outrages and grounds of complaint, there are cases in which British subjects and companies have large claims against the Venezuelan Government.

The Venezuelan Government declined to accept the explanations and assurances of His Majesty's Government with regard to the *Ban Righ* as in any way modifying the situation. As a result, the position of His Majesty's legation at Caracas has been rendered, for diplomatic purposes, quite impracticable, as all representations, protests, and remonstrances now remain disregarded and unacknowledged.

FOREIGN OFFICE, *July 20, 1902*

*Mr. Haggard to Señor Baralt.*

No. 4.]

CARACAS, July 30, 1902.

M. LE MINISTRE: I have the honor to state to your excellency that I have been informed by His Majesty's Government that they have had under their serious consideration a succession of cases in which the Venezuelan Government have interfered with the property and liberty of British subjects in a wholly unwarrantable manner.

They enumerate the followinig instances which have occurred since the beginning of last year:

That of the seizure and deportation by the Venezuelan gunboat *Augusto* of British subjects; that of the seizure of the boat and property of John Craig, on the island of Patos; the case of the *Buena Fe*, which involved a similar interference and violation of treaty; that of the *María Teresa*, that of the *Pastor*, that of the *Indiana*, and that of the *In Time*. Satisfactory explanations have not been forthcoming in any of these cases.

The confiscation of the British ship *Queen* appears to His Majesty's Government to be a still more flagrant case.

It is not possible, His Majesty's Government consider, to tolerate a continuance of conduct which, in this last incident, reached a climax; and they have consequently instructed me to record a formal protest with reference thereto, and to convey to his excellency the President, and to the minister for foreign affairs, in terms about which there can be no mistake, that unless explicit assurances are received by His Majesty's Government that such instances shall not occur again, and that unless full compensation be paid promptly to the injured parties wherever it be shown to the satisfaction of His Majesty's Government that such compensation be justly due, they will take such steps as they may consider to be necessary to exact the reparation which they have the right to demand in these cases, as well as on account of the claims of the British railway companies in Venezuela, as also for any loss caused by the conduct of the Venezuelan consul at Trinidad, for which there is no possible justification.

I avail, etc.,

W. H. D. HAGGARD.

*Señor Baralt to Mr. Haggard.*

Translation.]

No. 5.]

CARACAS, August 2, 1902.

M. LE MINISTRE: Your excellency's note of the 30th July, which I received on the 1st instant, contains a résumé of complaints and claims on different subjects, some of which, such as the capture of



John Craig's boat and the proceedings against the sloop *María Teresa*, the Government of the Republic had considered as altogether disposed of. Another of these, relating to the islet of Patos, has been settled for some time by the Government of Venezuela without the slightest opposition being made by Great Britain on legal grounds, and the rest were already settled, or on the road to a settlement, even although an answer relating to them had been postponed owing to circumstances which need not again be dwelt on, as they are well known to His Majesty's legation. The chief of the executive power is consequently surprised, both at your excellency's putting forward these facts and at the general tone of your note; and, in spite of all the questions which it raises, he does not consider it advisable to answer it immediately, owing to the fact that the Venezuelan Government decided to postpone dealing with matters of that and of an analogous character, from the time when the *Ban Righ* committed her injurious acts and the Trinidad authorities showed such open partiality, in a sense hostile to the peace of Venezuela.

The surprise of the chief of the Government is the more justifiable inasmuch as your note raises a variety of questions, some of which have already been disposed of, and the British legation could surely not have considered the present a favorable opportunity for discussing even those questions which are still pending with this Government, seeing that no settlement has yet been arrived at relative to the complaints and remonstrances laid before Great Britain in consequence of the action of the *Ban Righ* and of the attitude of the British authorities in connection with that vessel. Your excellency is aware that the right which supports Venezuela on this point is upheld by proofs preserved in the archives of this ministry, and you also know by the Venezuelan notes of the 28th February, of the 8th and 13th March, and of the 5th April last that from that time the Venezuelan Government decided to postpone dealing with any other matters pending with the British legation until the settlement of the *Ban Righ* question, which is so ardently desired by the Venezuelan Government with a view to preserving their friendly relations with that of His Majesty.

This is, therefore, the occasion to state anew to your excellency that so long as a matter of such importance is not settled satisfactorily to the interests of both nations, this ministry can not entertain others which are entirely foreign to that object.

The conduct which in your note you attribute to the consul in Trinidad is a matter which may be considered in relation with the partiality of the colonial authorities.

R. LÓPEZ BARALT.



*Memorandum communicated to the German ambassador.*

No. 6.]

His Majesty's Government have within the last two years had grave cause to complain of unjustifiable interference on the part of the Venezuelan Government with the liberty and property of British subjects.

In three instances the objects of this interference were British trading vessels from the colony of Trinidad, which were pursued by Venezuelan guardacostas on a suspicion of smuggling or trading in arms, and this plea was made the excuse for a violation of British territorial waters, the seizure of the property of British subjects, and in one instance the willful destruction of the vessel.

In two further cases a similar unsupported charge was made the excuse for the seizure, and confiscation or destruction of British vessels in Venezuelan waters; while incidents of this nature reached their culminating point, when, on the 30th June last, the British ship *Queen*, while on her voyage from Grenada to Trinidad, was overhauled by a Venezuelan gunboat on the high seas off Carupano, stripped of her sails and deprived of papers, and finally confiscated on a bare suspicion of having carried a cargo of arms to Venezuela, the crew being put on shore and left destitute.

No efforts had been spared by His Majesty's minister at Caracas in each of the earlier cases to obtain an amicable settlement, but in none of them had satisfactory explanations been forthcoming. On the occurrence of the still more flagrant interference with the *Queen* it was felt that a continuance of such conduct could not be tolerated, and His Majesty's minister at Caracas was instructed on the 29th July to record a formal protest against the action of the Venezuelan Government, and to intimate clearly to the President and minister for foreign affairs that unless explicit assurances were received that such incidents should not recur, and unless full compensation were promptly paid to the injured parties wherever shown to the satisfaction of His Majesty's Government to be justly due, His Majesty's Government would take such steps as might be necessary to exact the reparation which they were entitled to demand in these cases, as well as on account of the claims of the British railway companies, and for any loss arising out of the conduct of the Venezuelan consul at Trinidad.

With reference to the two later points, it may be mentioned that there are several British railway companies in Venezuela which have large claims against the Government in respect of services rendered, damage done to property by Government troops, and in some instances for default of guaranty or loss by depreciation of Government bonds, while with regard to M. Figueredo, the Venezuelan consul at Trinidad, it may be stated that his conduct has given rise to

the gravest complaints on the part of the Trinidad government, both on account of the irregularities in the discharge of his consular functions and his assumption of unwarranted authority by the collection of customs duties for Venezuela within the British colony of Trinidad.

The reply of the Venezuelan Government to the formal protest of His Majesty's minister practically ignores the remonstrances of His Majesty's Government, while it makes no allusion whatever to the threat that they may be compelled to take steps to obtain reparation for the wrongs complained of.

The reply is based on the decision come to by the Venezuelan Government to postpone any reply to all representations on the part of His Majesty's Government from the time of the injuries caused by the *Ban Righ*, so long as the situation created by the dispatch of that vessel from this country continued.

In connection with the already well-known case of the *Ban Righ*, it may be explained that the vessel was detained for some time under surveillance in British waters, and was only allowed to leave the port of London in January last after examination of her papers and cargo, on receipt of an assurance from the Colombian representative at this court that the vessel was intended for the service of his Government, and after ascertaining that no state of war existed between Colombia and Venezuela.

His Majesty's Government had in these circumstances no further ground for detaining the vessel, and the fullest explanations were afforded to the Venezuelan Government on the subject.

In view of the unsatisfactory nature of the Venezuelan reply, His Majesty's Government are compelled to consider what steps may be necessary to enforce their demands, but before proceeding to ulterior measures they propose to intimate their regret at the manner in which their representations have been received, and to state that they are unable to admit that the serious causes of complaint put forward can be disposed of by a refusal to discuss them, and that if such a refusal is persisted in, it will become their duty to consider what steps they should take in view of such refusal for the protection of British interests. His Majesty's Government are, however, unwilling to exclude at once all possibility of proceeding with negotiations, and they are therefore ready to consider any further communication which the Venezuelan Government may be prepared to make.

As the German Government have expressed their willingness to unite with His Majesty's Government in putting pressure upon Venezuela, they may perhaps think it expedient to associate themselves with His Majesty's Government in this preliminary step, and in such case they may be disposed to instruct their representative at Caracas to inform the Venezuelan Government that the Imperial Government

are aware of the communications which have passed between this country and Venezuela, and that the British and German Governments have determined to act together in pressing the claims of their subjects upon the attention of Venezuela.

FOREIGN OFFICE, *October 22, 1902.*

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*Mr. Haggard to Señor Baralt.*

No. 7.]

CARACAS, *November 11, 1902.*

M. LE MINISTRE: I am instructed by His Majesty's Government to inform you that the Republic of Venezuela that they regret the unsatisfactory character of the reply to the representations contained in my note to your excellency of the 30th July last. They are unable to admit that the serious causes of complaint put forward can be met by a refusal to discuss them.

If such a refusal is persisted in, it will become the duty of His Majesty's Government to consider what steps they should take for the protection of British interests.

They are, however, unwilling to exclude at once all possibility of proceeding with negotiations, and they are, therefore, ready to consider any further communication which the Government of the Republic may be prepared to make.

I avail, etc.,

W. H. D. HAGGARD.

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*The Marquess of Lansdowne to Sir M. Herbert.*

[Telegram.]

No. 8.]

FOREIGN OFFICE, *November 11, 1902.*

I should wish your excellency to obtain an interview with Mr. Hay at an early date, and to make a communication to him in the following terms:

His Majesty's Government have, within the last two years, had grave cause to complain of unjustifiable interference on the part of the Venezuelan Government with the liberty and property of British subjects. Every effort was made, but without result, to obtain an amicable settlement. In June last a British ship was overhauled on the high seas, and eventually confiscated, on a bare suspicion of having carried arms to Venezuela.

It was felt that a continuance of such conduct could not be tolerated, and His Majesty's minister at Caracas was instructed to record a formal protest, and to intimate clearly to the President and minister for foreign affairs that unless explicit assurances were received that such incidents should not recur, and unless full compensation

were promptly paid wherever shown to be justly due, His Majesty's Government would take such steps as might be necessary to exact the reparation which they were entitled to demand in these cases, as in others where endeavors to obtain redress had proved of no avail.

The reply was wholly unsatisfactory, and practically ignored the remonstrances of His Majesty's Government.

In view of the nature of this reply, His Majesty's Government are compelled to consider what course it may be necessary to pursue in order to enforce their demands. But, before proceeding to ulterior measures, they have decided to intimate their regret at the manner in which their representations have been received, and to state that the serious complaints put forward can not be disposed of by a refusal to discuss them. If such a refusal is persisted in, it will become their duty to consider what steps they should take for the protection of British interests. They are, however, unwilling to exclude at once all possibility of proceeding with negotiations, and are therefore ready to consider any further communication which the Venezuelan Government may be prepared to make.

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*Sir M. Herbert to the Marquess of Lansdowne—(Received November 13).*

[Telegram.]

No. 9.]

WASHINGTON, November 13, 1902.

I communicated to Mr. Hay this morning the substance of your lordship's telegram of the 11th instant.

His excellency stated, in reply, that the United States Government viewed with regret any resort to force on the part of European powers against the Republics of Central and South America, but they could not object to any action taken by them with the view of obtaining redress for injuries inflicted on their subjects, provided such action did not contemplate any territorial acquisition.

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*Señor Baralt to Mr. Haggard.*

[Translation.]

No. 10.]

CARACAS, November 14, 1902.

M. LE MINISTRE: Your excellency's note of the 11th instant might well lead the Government of the Republic to infer, to its great regret, that His Majesty's Government had not, as yet, carefully considered the series of complaints and representations submitted to His Majesty's legation in respect of the acts perpetrated by the *Ban Righ* since that vessel's departure from British ports, and in conse-

quence of the attitude taken up by the authorities of Trinidad since the beginning of the revolution, which was fostered within the territory of the colony in question, and which has lately caused such grievous ravages in Venezuela.

If His Majesty's Government had examined these charges, of which a complete résumé up to the 5th April last was given in my note of that date, and to which, among others, there has just been added that of the dispatch of many bags of correspondence to Ciudad Bolívar, a place in the possession of a rebellion against the lawful Government of the Republic, it would not ascribe the postponement of all other matters to the mere caprice of Venezuela, and it would see, on the contrary, in that action the logical result of a situation which is certainly very different to any which the Federal Executive could have anticipated in the course of its friendly relations with the Kingdom of Great Britain.

If the facts are viewed impartially and calmly, on the one hand there will be observed the eagerness of His Majesty's Government or of the legation in Caracas to discuss matters of comparatively secondary importance, many of which might be considered as investigated and settled, and on the other the just, the natural, the necessary interest of Venezuela to see her rights recognized and respected—rights which arise from the grave injuries caused by a ship which left English waters furnished with British papers and by the undisguised facilities which, for the promotion of their designs, those persons found in the neighboring colony, who, within and without that vessel, prepared together all the harm suffered by the Republic from the month of January last up to the present time. Thus the situation which forms the subject of your excellency's note can not be attributed to the Government of Venezuela, nor even to an indirect exercise of their will.

The effects resulting from that situation are in harmony with an order of ideas with which His Majesty's Government will closely sympathize, for they can not fail to understand and admit that a government, in defending their rights and performing their duty, must follow the course of action imposed upon them by circumstances which have not been of their own creation, and must adopt such rule of conduct as may be prescribed by necessities over which they had no control. In this respect Venezuela takes no step which can run counter to any formula of courtesy or to any principle of international law. Her conduct is, in all respects, in harmony with the legal aspects of the matter, and for her nothing would be more satisfactory, in view of the close bonds of her friendship for Great Britain, than to receive from the Government of that Kingdom some indication of the desire for the establishment of a mutual understanding to remedy the injuries caused by the steamship *Ban Righ*,

and the subsequent conduct of the authorities of Trinidad. Up to the present all that has been evident has been the most unfair refusal on the part of Great Britain to consider the matter, a refusal aggravated by a fact so recent as that of your excellency not having even answered the note which was sent to you on the 27th October, on the subject of the illegal dispatch of a large mail from Trinidad to places occupied by insurgents, as is Ciudad Bolivar.

The serious incidents which, to the injury of Venezuela, have occurred since last January as the inevitable result of the acts of the *Ran Righ*, and owing to the conduct followed by the authorities of the neighboring colony, have been gravely considered here. The Government does not ask anything from Great Britain which is not a legitimate consequence of the nature of the affair, and therefore it appeals to the spirit of justice and to the fairness of His Majesty's Government to place the matter on a basis of mutual agreement, which is the only way of settling the abnormal situation to which the note of your excellency refers, and which the Government of the Republic is the first to deeply regret.

I avail, etc.,

R. LÓPEZ BARALT.

*Memorandum communicated by M. Cambon, November 28, 1902.*

[Translation.]

No. 11.]

The French ambassador has informed his Government of the intentions of Lord Lansdowne in regard to Venezuela, which were communicated to him on Wednesday last, the 26th November.

The British Government appear to be disposed to have recourse to a naval action. Should such action lead to the seizure of the Venezuelan customs the Government of the Republic would have to make certain reservations.

Thus, in the Franco-Venezuelan treaty of the 26th November, 1885 (De Clerc, Vol. XV, Supplement, p. 903), Article II, runs:

The sum of 493,970.92 francs, to which will subsequently be added the amount of the indemnities allotted by the mixed commission instituted under this convention, will be met by the proportion accorded monthly to France out of the 13 per cent of the 40 unities of the customs assigned by Venezuela to the diplomatic debt. This monthly quota shall not be less than \* \* \* etc.

Besides this, there are fresh indemnities to be paid to the French Government out of this same diplomatic debt, in accordance with an arrangement signed at Paris on the 19th February, 1902.

The effect of these conventions is that a seizure of the resources of the Venezuelan customs would prejudice French interests.



The French ambassador brings this position to the notice of the secretary of state for foreign affairs.

FRENCH EMBASSY, *London*.

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*The Marquess of Lansdowne to M. Cambon.*

No. 12.]

FOREIGN OFFICE, *December 5, 1902.*

YOUR EXCELLENCY: I have given careful consideration to the memorandum which you were good enough to leave here on the 28th ultimo, calling attention to the treaty between France and Venezuela of 1885, and the protocol signed at Paris this year, by which a proportion of the Venezuelan maritime customs is assigned to the French creditors.

In reply, I have the honor to inform your excellency that His Majesty's Government are fully aware of the nature of the French claims upon a portion of the revenue derived from the maritime customs of Venezuela. In any measures to which His Majesty's Government may resort for the purpose of enforcing their claims against the Venezuelan Government, care will be taken that French interests are not prejudiced.

I have, etc.,

LANSDOWNE.

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*Mr. Haggard to Señor Baralt.*

No. 13.]

CARACAS, *December 7, 1902.*

M. LE MINISTRE: In reply to your excellency's note of the 14th [instant] *ultimo*, I have the honor to inform you that I have been instructed by His Majesty's Government to point out to the Venezuelan Government in writing that, with regard to the steamship *Ban Righ*, His Majesty's Government have given full explanations, and have shown that on this account there is no legitimate ground of complaint. Nor do His Majesty's Government consider that there is any justification for attributing blame to the authorities at Trinidad, who only acted in accordance with instructions.

I have the honor to state, further, that His Majesty's Government also regret the situation which has arisen, but that they can not accept your excellency's note as in any degree a sufficient answer to my communications or as indicating an intention on the part of the Venezuelan Government to meet the claims which His Majesty's Government have put forward, and which must be understood to include all well-founded claims which have arisen in consequence of the late civil war and previous civil wars, and of the maltreatment or false imprisonment of British subjects, and also a settlement of the external debt.

I am to request the Venezuelan Government to make a declaration that they recognize in principle the justice of these claims, that they will at once pay compensation in the shipping cases, and in the above-mentioned cases and in those where British subjects have been falsely imprisoned or maltreated, and that in respect of other claims they will be prepared to accept the decisions of a mixed commission with regard to the amount, and the security for payment to be given.

I am further to express the hope that the Venezuelan Government will comply with these demands, and not compel His Majesty's Government to take steps to obtain satisfaction.

I am to add that His Majesty's Government have been informed of the claims of the German Government against Venezuela, that the two Governments have agreed to act together in order to obtain a settlement of all their claims, and that His Majesty's Government will require the immediate payment of a sum equal to that which may, in the first instance, be paid to the German Government. Any balance after the discharge of pressing claims will be held on account for the liquidation of the claims which will go before the commission.

I am further instructed by His Majesty's Government to make it clear that this communication must be regarded in the light of an ultimatum.

I avail, etc.,

W. H. D. HAGGARD.

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*Señor Baralt to Mr. Haggard.*

[Translation.]

No 14.]

CARACAS, *December 9, 1902.*

M. le MINISTRE: On Sunday, the 7th instant, a person with whom I have not the honor of being officially acquainted, asked for me in my private house in order to deliver to me, in your excellency's name, the note of the same date with reference to the claims of British subjects arising from the last civil war and from former ones. A feeling of exaggerated courtesy on my part induced me to receive the note on that day and under those circumstances.

As this ministry has been carrying on a lengthy correspondence with His Majesty's legation on the subject of the complaints which Venezuela had presented as the occasion arose to the Government of Great Britain with reference to the injuries caused by the *Ban Righ*, and to the partial conduct of the authorities of Trinidad in respect to the revolution which has just been devastating the Republic, your excellency begins by referring to one of my notes, which you quote as being of the 14th instant, and which was doubtless that of the 14th ultimo. With reference to this note, your excellency states that the Government of His Majesty could not admit

that there is any foundation for the demands of Venezuela, since the acts of the *Ban Righ*, as you add, had been fully explained, and the authorities of Trinidad had, moreover, not acted otherwise than in accordance with their instructions. Your excellency then enters into the question of the British claims, and asks, in the name of your Government, that Venezuela should declare that they are just in principle; and you finally allude to the necessity of paying them, and to the common action which the United Kingdom and the German Empire have agreed to exercise in order to compel the Republic to do so.

The Government have considered this note with the attention which it deserves, without having found in the narration of the facts which it contains anything to justify the present attitude, or any sufficient reason for the omission of reciprocal understanding with a view to avoiding or preventing difficulties. The Government of the Republic will begin by reminding you that the essential object of the note of the 14th November, which is that to which your excellency doubtless refers, was to insure an immediate agreement with Great Britain with reference to the pending questions; hence the surprise with which it has seen apparently eluded or unnoticed the cordial and friendly sentiments which had been so recently expressed. With reference to the *Ban Righ*, no action has been taken to alleviate the tremendous injuries which it caused to the Republic, and with reference to the conduct observed by the authorities of Trinidad, far from offering compensation, it appears that they obeyed definite instructions from the English Government. This circumstance does not require any further comment, since it is enough in itself to give the fullest justification to all the demands which Venezuela has made in the correspondence with the legation up to the 14th November last.

With reference, furthermore, to the essential part of your excellency's note, or its real object, which can only be, as must be deduced from its text, to secure the interests of British subjects, every facility is furnished for the fulfillment of this object without the Government going beyond, as it can not go beyond, their administrative functions in order to harmonize the condition of affairs with the desire expressed in the name of Great Britain. There is no reason why the Federal Government should not recognize the justice of obligations which are provided for in the national laws, and on this point you may be perfectly sure that the interests in question will be always protected and duly attended to.

With reference to the claims, your excellency would seem to refer definitely to those which you enumerated in a note of the 20th February last, amounting, in your opinion, to 36,401 bolivars. The examining commission created with the agreement of the national

legislative body will take them into consideration and will settle them in accordance with justice. The remaining cases, which are not answered in the correspondence, depend, as far as they can be considered as constituting claims, on facts which have to be proved or defined, and which the competent authorities will attend to or are attending to. And since your excellency speaks of well-founded claims, it does not appear possible that such cases, in their actual condition or legal position, can have the same character as those which are explained in documents which testify to their character, and which give an opportunity of enlightening the judgment or guiding the decision of the body who will consider them. The Government—however much they may consider and investigate it—can find nothing else included in the present request or demand of Great Britain, since the so-called external debt, which is cited incidentally in the note, ought not to be, and never has been, a subject for action outside the national law of public credit, in which it takes its place with all its guaranties and all the effects which it enjoys by regulation.

The war which has been ruining Venezuela for a year has left the public treasury little less than exhausted, and prevented the administration from attending, for the moment, to serious calls of national credit. So long as the work of pacification—near to its end though it be—is not completed, the difficulty exists. When once peace is declared, as it shortly will be, it will not be necessary to remind the Government of the Republic of the fulfillment of its fiscal duties, since it well knows its duty in this respect without the necessity of pressure or of spur, contrary, as your excellency will understand, to the laws of mutual respect and of true cordiality.

Accept, etc.,

R. LÓPEZ BARALT.

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*Mr. Haggard to the Marquess of Lansdowne—(Received December 10).*

[Telegram.]

No. 15.]

LA GUAIRA, December 10, 1902.

Three Venezuelan ships of war were brought out and another disabled by four boats from His Majesty's ship *Retribution*, armed with Maxim guns, and six boats from the German men-of-war. No resistance was offered. Until the commodore arrives or His Majesty's ship is relieved, and possibly longer, I must remain here. The American ships are leaving immediately, and I am sending this telegram by one of them which is going to Curaçao, as it is unsafe to send on shore in the present state of affairs.

*Mr. White to the Marquess of Lansdowne—(Received December 13).*

AMERICAN EMBASSY,  
No. 16.] *London, December 13, 1902.*

MY LORD: The Government of Venezuela has requested the American minister at Caracas to communicate to the Governments of His Britannic Majesty and of Germany, a proposition to the effect that the present difficulty respecting the manner of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration; and I have the honor, in accordance with instructions from my Government, to communicate this proposal to your lordship.

In view of the present condition of affairs in Venezuela I venture to hope that it may be possible for you to enable me to inform my Government, at an early date, of the decision arrived at by His Majesty's Government, with regard to the proposal in question.

I have, etc.,

HENRY WHITE.

*M. Grénier to the Marquess of Lansdowne—(Received December 15).*

[Translation.]

No. 17.] BELGIAN LEGATION, *December 14, 1902.*

MY LORD: Inasmuch as the events in Venezuela may lead the British forces to take possession of the custom-houses of that country, my Government consider it desirable to inform His Britannic Majesty's Government that Belgian interests, as well as French interests, are guaranteed by the Venezuelan customs.

I have, therefore, been directed to make known to your lordship the prior right which Belgium would have, in such an eventuality, to a part of the revenues of those customs.

I avail, etc.,

ALBÉRIC GRÉNIER.

*M. Delcassé to M. Cambon—(Communicated by M. Cambon December 19).*

• [Translation.]

No. 18.] PARIS, *December 18, 1902.*

Affairs of Venezuela.

The Governments of the United States, Spain, and Belgium having decided to claim most-favored-nation treatment for the settlement of all the demands for compensation made by their citizens or subjects, the Government of the Republic have thought it right also to secure every guarantee for the interests of their nationals.

The French representative at Caracas has, consequently, been requested to claim for the adjustment of our claims founded on events subsequent to the 23d May, 1899, a method of settlement and payment equally favorable with that obtained by any other power.

As to our claims in respect of events prior to the 23d May, 1899—that is to say, the election of President Castro—the method of settling these claims was provided for by the treaty of 1885 and the protocol of 1902; but, as it is necessary to see that our privileges in this regard are not diminished, the French representative has also been instructed, should one of the other creditor powers obtain for its claims of the same date a more advantageous method of settlement, to claim the benefit of such method at once.

As we are anxious in these circumstances to keep the British Government informed of our intentions, I request that you will make known to them verbally the sense of the instructions sent to our agent.

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*The Marquess of Lansdowne to Baron Grénier.*

No. 19.] FOREIGN OFFICE, *December 19, 1902.*

SIR: I have the honor to acknowledge the receipt of your note of the 14th instant calling attention to the fact that there are Belgian as well as French claims upon a portion of the revenue derived from the maritime customs of Venezuela.

In reply I have the honor to inform you that in any measures to which His Majesty's Government may resort for the purpose of enforcing their claims against the Venezuelan Government care will be taken that Belgian interests are not prejudiced.

I have, etc.,

LANSDOWNE.

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*Mr. White to the Marquess of Lansdowne—(Received December 19).*

No. 20.] AMERICAN EMBASSY, *London, December 19, 1902.*

MY LORD: I have the honor to inform your lordship that Mr. Bowen, the American minister to Venezuela, has informed my Government by telegraph that the Venezuelan Government has conferred upon him full powers to enter into negotiations on the part of Venezuela to settle the present difficulties with Great Britain, Germany, and Italy.

I am instructed by Mr. Secretary Hay to communicate the Venezuelan proposition to your lordship, and to ascertain whether His Majesty's Government would be disposed to assent thereto.

I have, etc.,

HENRY WHITE.



*Extract from the London Gazette of December 20, 1902.*

No. 21.]

- It is hereby notified that as the United States of Venezuela have failed to comply with the demands of His Majesty's Government, a blockade by His Majesty's naval forces of the ports of La Guaira, Carenero, Guanta, Cumana, Carupano, and the mouths of the Orinoco is declared, and such blockade will be effectively maintained from and after the 20th day of December, subject to an allowance of the following days of grace: For vessels sailing before the date of this notification from West Indian ports, and from ports on the east coast of the continent of America, ten days for steamers and twenty days for sailing vessels; from all other ports, twenty days for steamers and forty days for sailing vessels; for vessels lying in ports now declared to be blockaded, fifteen days. Vessels which attempt to violate the blockade will render themselves liable to all measures authorized by the law of nations and the respective treaties between His Majesty and the different neutral powers.

FOREIGN OFFICE, *December 20, 1902.*

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*Memorandum communicated to Mr. White, December 23, 1902.*

No. 22.]

His Majesty's Government have, in consultation with the German Government, taken into their careful consideration the proposal communicated by the United States Government at the instance of that of Venezuela.

The proposal is as follows:

That the present difficulty respecting the manner of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration.

The scope and intention of this proposal would obviously require further explanation. Its effect would apparently be to refer to arbitration only such claims as had reference to injuries resulting from the recent insurrection. This formula would evidently include a part only of the claims put forward by the two Governments, and we are left in doubt as to the manner in which the remaining claims are to be dealt with.

Apart, however, from this, some of the claims are of a kind which no government could agree to refer to arbitration. The claims for injuries to the person and property of British subjects, owing to the confiscation of British vessels, the plundering of their contents, and the maltreatment of their crews, as well as some claims for the ill usage and false imprisonment of British subjects, are of this descrip-

tion. The amount of these claims is comparatively insignificant, but the principle at stake is of the first importance, and His Majesty's Government could not admit that there was any doubt as to the liability of the Venezuelan Government in respect of them.

His Majesty's Government desire, moreover, to draw attention to the circumstances under which arbitration is now proposed to them.

The Venezuelan Government have during the last six months had ample opportunities for submitting such a proposal.

On the 29th of July, and again on the 11th November, it was intimated to them in the clearest language that unless His Majesty's Government received satisfactory assurances from them, and unless some steps were taken to compensate the parties injured by their conduct, it would become necessary for His Majesty's Government to enforce their just demands. No attention was paid to these solemn warnings, and, in consequence of the manner in which they were disregarded, His Majesty's Government found themselves reluctantly compelled to have recourse to the measures of coercion which are now in progress.

His Majesty's Government have, moreover, already agreed that in the event of the Venezuelan Government making a declaration that they will recognize the principle of the justice of the British claims, and that they will at once pay compensation in the shipping cases, and in the cases where British subjects have been falsely imprisoned or maltreated, His Majesty's Government will be ready, so far as the remaining claims are concerned, to accept the decision of a mixed commission, which will determine the amount to be paid and the security to be given for payment. A corresponding intimation has been made by the German Government.

This mode of procedure seemed to both Governments to provide a reasonable and adequate mode of disposing of their claims. They have, however, no objection to substitute for the Special Commission a reference to arbitration, with certain essential reservations. These reservations are, so far as the British claims are concerned, as follows:

1. The claims (small, as has already been pointed out, in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews, and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration.

2. In cases where the claim is for injury to, or wrongful seizure of, property, the questions which the arbitrators will have to decide will only be (a) Whether the injury took place, and whether the seizure was wrongful; and (b) if so, what amount of compensation is due.

That in such cases a liability exists must be admitted in principle.

3. In the case of claims other than the above, we are ready to accept arbitration without any reserve.

It would, in the opinion of both Governments, be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government, and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

Should the President of the United States be willing to undertake the task of arbitrator, the British and German Governments would avail themselves of his good offices with the highest satisfaction.

If it should unfortunately prove impossible for the President to render this important service to the two Governments, they are prepared to refer the questions at issue to arbitration by The Hague Tribunal.

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*Mr. White to the Marquess of Lansdowne—(Received December 27).*

No. 23.]                      AMERICAN EMBASSY, *London, December 27, 1902.*

MY LORD: With reference to recent interviews with your lordship relative to the submission to arbitration of the questions at issue between Great Britain and Venezuela, and particularly to the memorandum which you were so good as to hand me on the 23d instant, I have the honor to inform you that the President of the United States profoundly appreciates the courtesy with which the powers in interest have suggested his name as arbitrator in the matters now pending in Venezuela; and if no other, or no better, means of settling the subjects in dispute presented themselves, he would willingly comply with the wishes of the powers, and give his best efforts to an end so laudable. But the President has thought it most desirable from the beginning that the entire controversy should be submitted to the judgment of that high tribunal at The Hague which has been created by the principal powers of the world for the consideration of precisely such causes, involving, as the present controversy does, no question of national honor nor the cession of territory.

After a thorough consultation with all of the powers concerned, during which the President has found an honorable spirit of candor and of mutual consideration animating every one of them, he has been greatly gratified to learn that, in the event of his not undertaking the important duty to which the powers have invited him, they would all be willing to accept a reference to The Hague.

The President has therefore the greatest pleasure in announcing to the Governments of Great Britain, Germany, Italy, and Venezuela that all of them have accepted in principle the proposition of a reference of pending questions to the tribunal of The Hague.

If the President can be of any further service in arranging the pre-

liminaries of such an understanding, he will gladly hold himself at the disposition of the powers concerned; and if their representatives should find it desirable to meet in Washington, he would be happy to welcome them there, and to facilitate their labors in every possible way.

I have, etc.,

HENRY WHITE.

*Mr. White to the Marquess of Lansdowne—(Received January 1).*

No. 24.] AMERICAN EMBASSY, *London, January 1, 1903.*

MY LORD: I have the honor, in accordance with instructions from my Government, to communicate to your lordship the following copy of a telegram, which was received yesterday by Mr. Secretary Hay from Mr. Bowen, American minister to Venezuela:

"I recognize, in principle, the claims which the allied powers have presented to Venezuela. They would already have been settled if it had not been that the civil war required all the attention and all the resources of the Government. To-day the Government bows to superior force, and desires to send Mr. Bowen to Washington at once, to confer there with the representatives of the powers that have claims against Venezuela, in order to arrange either an immediate settlement of all the claims, or the preliminaries for a reference to the Tribunal of The Hague, or to an American Republic, to be selected by the allied powers and by the Government of Venezuela. Mr. Bowen would be duly authorized to settle the whole question as the representative of Venezuela.

"CIPRIANO CASTRO."

Copies of the foregoing telegram from Mr. Bowen have also been transmitted by the Secretary of State to the American ambassadors at Berlin and Rome.

I have, etc.,

HENRY WHITE.

*The Marquess of Lansdowne to Mr. White.*

No. 25.] FOREIGN OFFICE, *January 5, 1903.*

SIR: I have the honor to inform you, in reply to your communication of the 1st instant, that His Majesty's Government have taken into consideration the answer received by Mr. Secretary Hay from the President of the Venezuelan Republic to the proposals contained in the memorandum which, on behalf of His Majesty's Government, I handed to you on the 23d December, 1902.

His Majesty's Government observe with satisfaction President Castro's statement that he recognizes "in principle" the claims which they have put forward. His Majesty's Government understand this statement to signify that President Castro agrees on the

part of the Venezuelan Government that any discussion in which Mr. Bowen, as the representative of that Government, is to engage at Washington with the representative of His Majesty's Government are to proceed upon the assumption that the Venezuelan Government unreservedly accept and agree to be bound by the conditions laid down in the memorandum of the 23d December, 1902, which run as follows:

1. The claims (small, as has already been pointed out, in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews, and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration.

2. In cases where the claim is for injury to, or wrongful seizure of, property the questions which the arbitrators will have to decide will only be: (a) Whether the injury took place, and whether the seizure was wrongful; and (b) if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

3. In the case of claims other than the above, we are ready to accept arbitration without any reserve.

It would, in the opinion of both Governments (British and German), be necessary that the Arbitral Tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government, and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

On receiving a definite assurance from President Castro that this interpretation of his language is accepted by him as correct, and that whatever procedure be adopted adequate provision will be made for the prompt satisfaction of the claims specified in paragraph (1), His Majesty's Government will be prepared to authorize His Majesty's ambassador at Washington to confer on this basis with Mr. Bowen, as the representative of the Venezuelan Government, and will furnish Sir M. Herbert with the necessary instructions for examining the possibility of an immediate settlement, or, failing such a settlement, for arranging a reference of all points left open for arbitration to the Tribunal at The Hague.

His Majesty's Government will be much obliged if Mr. Secretary Hay will be good enough to take such steps as may be necessary to communicate the substance of this memorandum to President Castro, and will request an answer at the President's earliest convenience.

I have, etc.,

LANSDOWNE.

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*Mr. White to the Marquess of Lansdowne—(Received January 9).*

No. 26.] AMERICAN EMBASSY, London, January 9, 1903.

MY LORD: I have the honor, in accordance with instructions from my Government, to communicate to your lordship the copy of a tele-

gram which was received yesterday morning by Mr. Secretary Hay from Mr. Bowen, the American minister at Caracas:

I have just received the following from President Castro:

"MR. MINISTER: The Venezuelan Government accepts the conditions of Great Britain and Germany, and requests you to go immediately to Washington for the purpose of conferring there with the diplomatic representatives of Great Britain, Germany, and with the diplomatic representatives of the other nations that have claims against Venezuela, and to arrange either an immediate settlement of said claims, or the preliminaries for submitting them to arbitration.

"CIPRIANO CASTRO, *Constitutional President.*"

(Confidential.) If, as I understand, Great Britain and Germany want to know what guarantee they will have, please inform them that it will be the custom-houses; consequently I beg that the blockade be raised at once.

BOWEN.

I am instructed, furthermore, to inform your lordship that Mr. Bowen will proceed to Washington immediately.

I have, etc.,

HENRY WHITE.

*The Marquess of Lansdowne to Sir M. Herbert.*

No. 27.]

FOREIGN OFFICE, *January 12, 1903.*

SIR: The United States chargé d'affaires told me to-day that he was instructed to inform me that Mr. Bowen had expressed to the United States Government his anxiety that the Venezuelan blockade should be raised at the earliest possible moment on account of the scarcity of provisions in Venezuela, which threatened general distress.

I told Mr. White that much as we desired that the blockade should not be unnecessarily prolonged, I did not see how it was possible for us to raise it at this moment. I had not failed to take note of Mr. Bowen's statement contained in the note which Mr. White had handed to me on the 9th instant. It ran as follows:

If, as I understand, Great Britain and Germany want to know what guaranty they will have, please inform them that it will be the custom-houses.

This no doubt amounted to an intimation that the Venezuelan Government were prepared, in one manner or another, to hypothecate their customs revenue for the purpose of meeting their liabilities in respect of the compensation due to the powers. We could not, however, considering the past conduct of the Venezuelan Government, afford to remove the pressure which had apparently brought them to a tardy recognition of their obligations until we had something more specific than this to go upon. It seemed to us that the first step to be taken was that Mr. Bowen should meet our representative at Washington, and should satisfy him that the proposals which he is empowered to submit are in strict accordance with the



conditions set forth in my memorandum of the 23d December and note of 5th January, and, in particular, that he is authorized to effect a prompt and satisfactory settlement of those British claims which are included in the first of the three categories enumerated in the earlier notes.

The question of guaranties for the satisfaction of the remaining claims would also have to be carefully examined, and we were engaged in preparing instructions to you upon these and other points.

I could hold out no hopes that, until a satisfactory understanding had been arrived at with regard to them, the blockade would be raised. It would obviously be most inconvenient to raise it and afterwards to reimpose it in the event of the negotiations not proceeding satisfactorily.

I am, etc.,

LANSDOWNE.

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*The Marquess of Lansdowne to Sir M. Herbert.*

[Extract.]

No. 28.]

FOREIGN OFFICE, *January 13, 1903.*

I have now to give your excellency the following instructions:

Mr. Bowen will, no doubt, on his arrival at Washington ask you either directly or through the United States Government to receive him, and you should in reply intimate that you are authorized to confer with him as the representative of the Venezuelan Government for the purpose of examining the possibility of an immediate settlement of the claims put forward by His Majesty's Government, or, failing such a settlement, of arranging a reference of all points left open for arbitration to the Tribunal at The Hague.

The course of the negotiations will, in a great measure, depend upon the instructions with which Mr. Bowen has been furnished, and you will, in the first place, ascertain whether the proposals which he is empowered to submit are in strict accordance with the conditions set forth in my memorandum of the 23d December and note of the 5th January, to which reference has been already made.

Whether those proposals are made in contemplation of an immediate settlement, without reference to arbitration, or whether the discussion is directed to the preliminaries of arbitration, it will be indispensable that Mr. Bowen should at the outset satisfy you that he is authorized to arrive at a prompt and satisfactory settlement of those British claims which are included in the first of the three categories enumerated in the memorandum of the 23d December—claims, namely, which arise out of the seizure and plundering of British vessels and the outrages on their crews, and the maltreatment and false imprisonment of British subjects. These claims amount to about

£5,500, and His Majesty's Government require that this liability should be at once satisfied.

Other claims for compensation, including the railway claims and those for injury to, or wrongful seizure of, property, are estimated as amounting to about £600,000. His Majesty's Government will be ready to accept in satisfaction of these claims either a sufficient cash payment or a guaranty based on security, which must be adequate, and which the Venezuelan Government must be bound not to alienate for any other purpose. His Majesty's Government will be ready to renew the proposal which they deemed it equitable to make in the first instance—viz, that, before the amount to be actually handed over to claimants of this class is finally decided; a commission, upon which Venezuela would be represented, should be appointed to examine and report upon the amount to be awarded in satisfaction of each claim. It would probably be convenient that the commission, if appointed, should meet at Port of Spain. Should a cash payment have been accepted by His Majesty's Government, they will be prepared to refund any surplus which may be available after the examination.

It is desirable that advantage should be taken of this opportunity in order to effect a settlement of the claims of the bondholders. The British creditors are principally interested in the loan of 1881. This loan represents the outcome of various arrangements under which the bondholders have submitted to large reductions in their claims. On the 31st December last there were 56 monthly installments of the debt service in arrear, representing a sum of about £394,625. An arrangement for the settlement of the external debt of Venezuela has been drawn up by the council of foreign bondholders and the Disconto Gesellschaft of Berlin. The terms of this arrangement seem to be of a liberal character, and should be acceptable to the Venezuelan Government. I understand that in March, 1901, the Venezuelan National Assembly passed a law authorizing the president to make a settlement with the bondholders on these lines. I inclose copies of memoranda furnished to me by the council of foreign bondholders, showing the present position of the 1881 and 1896 loans.

If the endeavor to arrive at a direct settlement should prove unavailing, you will proceed to discuss with Mr. Bowen the preliminaries of a reference to the Tribunal of Arbitration at The Hague.

Before the signature of an agreement for reference to the tribunal, it will be necessary that the claims in the first category should, as in the case of a direct settlement, be disposed of by an immediate payment. The other claims, including those for injury to property and

the claims of the bondholders, would be submitted to the tribunal on the conditions laid down in the memorandum of the 23d December.

There is another point which you should take an early opportunity of mentioning to Mr. Bowen. The establishment of a blockade created ipso facto a state of war between Great Britain and Venezuela, involving, it might possibly be contended, the abrogation of any treaty existing between the two countries. In these circumstances, you should suggest an exchange of notes between your excellency, as His Majesty's representative, and Mr. Bowen, as representative of the United States of Venezuela, to the effect that it is agreed that the convention between Great Britain and Venezuela of the 29th October, 1834, which adopted and confirmed *mutatis mutandis*, the treaty of the 18th April, 1825, between Great Britain and the State of Colombia, shall be deemed to be renewed and confirmed, or, if the Venezuelan Government should prefer, provisionally renewed and confirmed pending the conclusion of a fresh treaty of amity and commerce.

It may be convenient that I should recapitulate briefly the instructions contained in the preceding paragraphs.

1. If an arrangement is concluded for a direct settlement:

(a) Claims arising out of the seizure and plundering of British vessels and the outrages on their crews, and the maltreatment and false imprisonment of British subjects, must be at once satisfied.

(b) Other claims for compensation, including the railway claims and those for injury to, or wrongful seizure of, property, must be met either by an immediate payment to His Majesty's Government or by a guaranty adequate, in your opinion, to secure them. These claims can, if this be desired, be examined by a mixed commission before they are finally liquidated.

(c) A fresh arrangement must be entered into by the Venezuelan Government in order to satisfy the claims of the bondholders, and this arrangement must include a definition of the sources from which the necessary payments are to be provided.

2. If recourse is had to the tribunal at The Hague:

(a) Immediate payment must be equally made of the claims in the first category.

(b) The other claims, including those of the bondholders, will be referred to the tribunal on the conditions laid down in the memorandum of the 23d December.

In either case, there must be an exchange of notes renewing the convention of the 29th October, 1834.

On learning that the negotiations have resulted in an agreement fulfilling the above conditions, His Majesty's Government will at once give orders that the blockade of the Venezuelan ports by His Majesty's ships shall be raised. They will also be prepared to restore

the vessels of the Venezuelan navy which have been seized, and, further, to release any other vessels captured under the Venezuelan flag on receipt of a guaranty from the Venezuelan Government that they will hold His Majesty's Government indemnified in respect of any proceedings which might be taken against them by the owners of such ships or of goods on board them.

All obstacles to the renewal of diplomatic intercourse will then have been removed, and His Majesty's Government will be happy to reestablish those friendly relations between Great Britain and Venezuela which previously existed, and which they sincerely desire to resume.

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*The Marquess of Lansdowne to Sir F. Lascelles.*

[Extract.]

No. 29.]

FOREIGN OFFICE, *January 15, 1903.*

I had some conversation yesterday with the German ambassador in regard to the action which might be taken by the British and German Governments in consequence of the communication made to us on the 9th instant by the Government of the United States as to Venezuelan affairs.

His excellency called my attention to the fact that President Castro's letter apparently contemplated that Mr. Bowen should confer not only with the representatives of Great Britain and Germany, but with those of all other nations having claims against Venezuela. His excellency regarded this intimation with some alarm.

I said that it seemed to me that the blockading powers stood on an entirely different footing from the rest, and that, in my view, it would be impossible for us to allow our representatives to take part in a general discussion at which a number of other powers would also be represented.

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*The Marquess of Lansdowne to Sir M. Herbert.*

No. 30.]

FOREIGN OFFICE, *January 16, 1903.*

SIR: I inclose, for your information, a copy of a dispatch<sup>a</sup> which I have addressed to Sir F. Lascelles recording my most recent conversations with the German ambassador in regard to Venezuelan matters.

I desire to call your excellency's special attention to the manner in which the conferences with Mr. Bowen should be conducted. His Majesty's Government are not prepared to join in a general discussion with other powers as to the questions at issue with Venezuela,

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<sup>a</sup> No. 29.

and your excellency must make it clear to Mr. Bowen that you are authorized to discuss with him only the British claims and the proposals which he may offer for their liquidation.

You will, however, communicate with your German and Italian colleagues as to the progress of your negotiations, and they will no doubt be instructed to keep you informed of their proceedings.

I am, etc.,

LANSDOWNE.

*Sir M. Herbert to the Marquess of Lansdowne—(Received January 21).*

[Telegram.]

No. 31.]

WASHINGTON, *January 21, 1903.*

I received a visit to-day from Mr. Bowen, who lost no time in making a formal request that, before we began to negotiate, the blockade of the Venezuelan ports should be raised. He dwelt on the injury caused by the blockade to the interests of foreign traders, especially English and German, and on the suffering entailed by the scarcity of food on the people of the country.

He supported his request by reference to the case of Don Pacifico in the year 1850, in which, on the arrival of the French negotiator, the blockade was suspended.

I told Mr. Bowen that I would telegraph this request to your lordship, but that, as I was still without instructions, I could not discuss the question with him.

*The Marquess of Lansdowne to Sir M. Herbert.*

[Telegram.]

No. 32.]

FOREIGN OFFICE, *January 21, 1903.*

With regard to your excellency's telegram of to-day, you will see from your instructions that the fulfillment of certain conditions is required before His Majesty's Government will consent to the blockade being raised.

*Sir M. Herbert to the Marquess of Lansdowne—(Received January 24).*

[Telegram.]

No. 33.]

WASHINGTON, *January 23, 1903.*

Venezuela. Mr. Bowen accepts, without reserve, the conditions laid down by His Majesty's Government.

For the payment of claims of the second category he proposes that

30 per cent of the receipts of the Puerto Cabello and La Guaira custom-houses should be made over to the powers every month, and that, should Venezuela fail to make this payment, the creditor nations shall be authorized to administer the said two custom-houses, putting in Belgian officials, with the consent of, and without opposition on the part of, Venezuela, until the entire foreign debt is paid.

Mr. Bowen gives as his reason for selecting Puerto Cabello and La Guaira that they are the most important ports in the country, and that, owing to their geographical position, they are not liable, as the others are, to fall into the hands of the revolutionists at any moment, but will remain under the control of the Government.

Mr. Bowen informs me that 25 per cent of the customs receipts are already devoted to the maintenance of the local State government in which each port is situated, and 13 per cent to the payment of existing diplomatic claims. Adding to this the 30 per cent now promised, only 32 per cent would be left for the expenses of the Government and the payment of the army, and Venezuela could not possibly get on with less.

Mr. Bowen states that if your lordship accepts this guaranty he counts on the raising of the blockade by His Majesty's ships, with or without the consent of the two other powers, in view of his acceptance of our conditions.

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*Sir M. Herbert to the Marquess of Lansdowne—(Received January 25).*

[Telegram.]

No. 34.]

WASHINGTON, *January 24, 1903.*

With reference to my telegram of yesterday, according to a statement made to me to-day by Mr. Bowen the total customs receipts of all the Venezuelan ports, reckoned on the average of the last three years, should produce a yearly revenue of at least 30,000,000 bolivars; while the yearly yield of those of Puerto Cabello and La Guaira should amount to 18,000,000 bolivars.

The figures given by him relative to the percentage of receipts devoted to local State government and existing diplomatic claims (see my telegram of yesterday) referred to the total customs receipts, so that the sum to be received by the Venezuelan Government will be greater than I at first supposed.

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*The Marquess of Lansdowne to Sir M. Herbert.*

[Telegram.]

No. 35.]

FOREIGN OFFICE, *January 24, 1903.*

The proposals made by Mr. Bowen, as reported in your telegram of to-day's date, are considered by His Majesty's Government to be



satisfactory in principle, and would be useful as a basis for the discussion which is about to be commenced by your excellency.

Without fuller explanations, however, as to the financial arrangements which are proposed, it is impossible to realize their effect, and as regards certain points we should require definite information.

These points are as follows:

1. There are, so far as we are aware, no published statistics as regards the customs receipts of La Guaira and Puerto Cabello. What is their estimated annual value?

2. It is impossible to judge to what extent the proposals are adequate to satisfy the British claims without information as to the amount of the entire foreign debt. Report its exact figure.

3. When the Venezuelan Government offer 30 per cent of the customs of La Guaira and Puerto Cabello do they mean the entire customs, or only 30 per cent of the 40 per cent of the total amount set apart by the law of 1873 for debt and development of the country, which includes the 13 per cent for the diplomatic debt, to which Mr. Bowen refers?

4. Is it proposed that the 30 per cent should be paid by monthly installments to the blockading powers only, or are the whole of the creditor powers also to share the benefit?

We shall be quite ready to accept the security proposed by Mr. Bowen if he can supply statements showing that he offers guaranties adequate in amount, and we shall be prepared to urge the German and Italian Government to accept it.

The British claims of the first line are of a different nature to any others, and, though trifling in amount, are of the first importance in principle. Their immediate settlement should present no difficulty, and you should therefore continue to demand their payment. We understand that for the claims which the German Government place in the first category they are ready to accept security.

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*Sir M. Herbert to the Marquess of Lansdowne—(Received January 25).*

[Telegram.]

No. 36.]

WASHINGTON, January 25, 1903.

Venezuela.

With reference to your telegram of yesterday, the following are Mr. Bowen's answers to your lordship's questions:

1. The value of the customs receipts of the two ports amounts to 18,000,000 bolivars yearly.

2. The total debt of Venezuela amounts to about 239,000,000 boli-

vars. This includes internal debt to the amount of 94,000,000 and exterior debt to the amount of 145,000,000.

3. Thirty per cent of the entire customs receipts of the two ports is offered by the Venezuelan Government.

4. Each of the creditor powers is to receive a share of the 30 per cent; 29,000,000 bolivars, approximately, is the amount of the total claims of the other powers who are not engaged in the blockade. As to our claims of the first line, Mr. Bowen agrees that they shall be satisfied. I am to receive from him for this purpose a promissory note for £5,500 payable within thirty days.

As soon as he is informed that the necessary orders have been issued for the raising of the blockade, which he trusts that your lordship will now consent to do within twenty-four hours, he will sign the promissory note, together with a protocol in which the other conditions which His Majesty's Government impose, all of which he has accepted, will be embodied.

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*The Marquess of Lansdowne to Sir M. Herbert.*

[Telegram.]

No. 37.]

FOREIGN OFFICE, *January 26, 1903.*

Although we shall certainly not interpose vexatious difficulties, and earnestly desire to arrive at an early settlement, we must have further explanation with regard to the Venezuelan proposal contained in your telegram of the 25th instant. On the following points we should be glad of further information:

It is understood that £213,000 is the sum which 30 per cent of the customs of the two ports would yield, and that this amount is intended to meet not only the claims of all the powers for compensation, but the entire foreign debt of Venezuela, which amounts to £5,742,000. The claims of the three powers engaged in the blockade will reach nearly £900,000, and those of nonblockading powers will reach some £1,148,514 in amount.

If only £213,000 a year is available, it is obvious that many years will elapse before the whole of the above liabilities are extinguished. In these circumstances the interest of the creditors would be far from assured, considering the insecurity of affairs in Venezuela.

We consider that the claims of the powers engaged in the blockade should not rank on the same line with other claims for compensation or by bondholders, and that some special arrangement should be made with regard to the former.

A portion of the revenue of the two ports might possibly be set apart under an arrangement by which the extinction of British, Ger-

man, and Italian claims, within, say, five years, would be provided for. It is presumed that this could be arranged without the other creditor powers, whose interests we have undertaken to respect, being injuriously affected.

We shall be prepared at once to move the German and Italian Governments to join with us in raising the blockade, in the event of a satisfactory arrangement on these lines being made.

It seems worth considering whether, with a view of facilitating such an arrangement, the assistance of one of the syndicates might not be invoked.

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*Sir M. Herbert to the Marquess of Lansdowne—(Received January 27).*

[Telegram.]

No. 38.]

WASHINGTON, *January 27, 1903.*

Venezuela. With reference to your lordship's telegram of yesterday, it is not intended that the 30 per cent of the receipts of the La Guaira and Puerto Cabello customs shall meet the foreign debt, but they are to be exclusively devoted to the object of paying off the claims for compensation which all the powers have put in, and I have been given a written guaranty to that effect by Mr. Bowen.

Under this arrangement the payment of all the claims of all the powers would occupy about ten years, unless, before the expiration of that time, they are guaranteed by one of the syndicates.

It is impossible for Mr. Bowen, who stands committed to the other powers, to give to the blockading powers priority over them in respect of payment. He asserts that all the creditor nations would have been placed on an equal footing if the question of claims had been referred to The Hague Arbitration Tribunal.

At the suggestion of the Italian ambassador, however, he has agreed that payment of the 30 per cent shall be made to the powers proportionately to the amount of their respective claims; and consequently the complete payment of the smaller claims will not take place before that of the larger.

Mr. Bowen, although he is of opinion that before long Venezuela will probably invoke the assistance of a syndicate in order that all the claims may be settled in cash, refuses, so far as he is personally concerned, to have anything to do with such a method of settlement.

He showed me to-day a letter from a German firm, which has large interests in Venezuela, in which it is pointed out that the result of making excessive demands on Venezuela would be to endanger her currency, and he insists that 30 per cent is the limit of what the country can bear.

*The Marquess of Lansdowne to Sir M. Herbert.*

[Telegram.]

No. 39.]

FOREIGN OFFICE, *January 28, 1903.*

With reference to your telegrams of the 27th instant, His Majesty's Government can not admit that pledges given by Mr. Bowen to the powers which are not engaged in the blockade are binding on this country, and His Majesty's Government can not accept a settlement which would force them to place their claims on the same footing with those of the nonblockading powers.

It should not be difficult to make a separate arrangement with the blockading powers by which annual installments would be guaranteed to them, secured on a part of the customs revenues of the two ports sufficient to extinguish their claims. Those claims amount to about £900,000, and I would suggest that six years would be a reasonable period for payment. The Venezuelan Government would not be prevented by this plan from making, with the other powers, simultaneous arrangements by which their claims for compensation would be satisfied.

You should discuss the matter with your German and Italian colleagues.

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*Sir M. Herbert to the Marquess of Lansdowne—(Received January 29).*

[Telegram.]

No. 40.]

WASHINGTON, *January 29, 1903.*

Venezuela. The Italian ambassador, the German chargé d'affaires, and I called to-night on Mr. Bowen. I informed him that we were forced to reckon with public opinion in England, and that it might be necessary to fall back on the Tribunal of The Hague.

We were unable to obtain a satisfactory answer from Mr. Bowen, who was very obdurate.

He ultimately made a statement in reply in the following terms:

I object to paying first the claims of the allied powers and the claims of the other nations afterwards, because—

1. I think it is unjust, unfair, and illegal to tie the hands of the said other nations for the period of five or six years that it would take to pay the claims of the allied powers.

2. If I recognize that brute force alone can be respected in the collection of claims I should encourage the said other nations to use force also.

3. If the allied powers wanted preferential treatment they should have asked for it in the beginning, and should not now propose it after I understood that all the conditions of the allied powers had been stated.

If, however, the demand for preferential treatment is raised simply as a point of honor, I am willing to agree that the entire 30 per cent be paid to the allied powers for the first month.

*The Marquess of Lansdowne to Sir M. Herbert.*

[Telegram.]

No. 41.]

FOREIGN OFFICE, *January 30, 1903*

With reference to my telegram of the 28th instant and to your excellency's telegram of the 29th instant, I have to recall that on the 27th ultimo the United States chargé d'affaires told me that the President was glad to be able to inform the Governments of Great Britain, Germany, Italy, and Venezuela that they had all in principle agreed to the proposal to refer the questions pending to the arbitration tribunal at The Hague. Although unable himself to act as arbitrator, the President was good enough to say that he would gladly hold himself at the disposition of the powers concerned if he could be of any further service in arranging the preliminaries of such a reference.

The President of Venezuela subsequently commissioned Mr. Bowen to proceed to Washington with a view of coming to an arrangement either for an immediate settlement of the claims, or for concerting preliminaries for their submission to the arbitration of the Tribunal at The Hague.

There appears to be no doubt that the blockade could have been raised within a very few hours if Mr. Bowen had expressed a preference for the second of the above alternatives. The preliminary conditions on which Great Britain and Germany had insisted had been agreed to by President Castro, including those relative to the claims of the first line, i. e., claims arising, for the most part, out of overt acts of spoliation and violence, of which, during recent years, British subjects and Germans have been the victims.

His Majesty's Government were ready to accept in full settlement of the British share of these claims the sum of £5,500 in cash, while Germany would accept a similar amount in cash, on condition of receiving priority as regards the sum of about £61,000, the balance of the German claims. Consequently, in addition to the conditions already agreed upon, only an immediate cash payment of £11,000 and prior security for £61,000 was required to make possible an immediate appeal to the tribunal at The Hague and the termination at the same time of the blockade. Mr. Bowen, however, preferred to make an attempt to bring about a direct settlement. His Majesty's Government have no desire to minimize the weight of his reasons for this, but the result has been that a state of affairs has unfortunately been prolonged which it was the earnest wish of His Majesty's Government to terminate.

It seems that Mr. Bowen has not thought it possible to come to any arrangement which would not place on precisely the same footing all the powers who have claims for compensation from Venezuela.

This is, in the opinion of His Majesty's Government, quite at vari-

ance with international practice and with principles of equity, and, except at the instance of some competent tribunal of arbitration, they could not assent to it.

It must be remembered that neither the President of the United States in his communications with His Majesty's Government, nor any of the blockading powers, nor, so far as I am aware, President Castro, have ever put forward a proposal of this nature.

The preferential treatment for which the blockading powers have asked is not, it must be further remembered, one by which either the resources at the disposal of the Venezuelan Government for the payment of the external debt would be exhausted, or by which the so-called "diplomatic debt," which amounts to only 5.2 per cent of the total customs revenue of Venezuela, would be interfered with.

The other powers will, without doubt, under the arrangements proposed by the blockading powers, be in a much more favorable position than they ever were before, and that, too, without incurring any of the trouble or expense involved in the naval operations which have been undertaken.

His Majesty's Government are of opinion, in these circumstances, that the method by which hostilities may be most expeditiously terminated would be by the reference of the question in dispute to the tribunal at The Hague, subject to the conditions already mentioned, unless, indeed, the President of the United States, in the interests of a prompt settlement, were to consent to decide the only point which seems to be an obstacle to the powers immediately interested arriving at a complete agreement. It is unnecessary to say that His Majesty's Government, in the event of the President consenting to adopt this course, would, with feelings of the utmost gratification, accept his good offices. In the event of the President being unable to do so, His Majesty's Government hope that he will give his assistance, in accordance with the offer quoted above, with a view to arrange the preliminaries for a reference to the tribunal at The Hague, and thus enable the powers to put an end to the blockade at once.

I have communicated to the German and Italian ambassadors here the substance of this telegram, and you may inform your German and Italian colleagues of the purport of these instructions.

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*The Marquess of Lansdowne to Sir M. Herbert.*

[Telegram.]

No. 42.]

FOREIGN OFFICE, *February 1, 1903.*

It is not the wish of His Majesty's Government to place any obstruction in the way of a reasonable arrangement between the



Government of Venezuela and other powers. At the same time, they consider it essential that priority should be given to the first rank of claims of the blockading powers, and that provision should be made for the extinction, within a reasonable time, of the second rank of claims.

Subject to the fulfillment of these conditions, the terms which Venezuela may find herself able to offer to the other powers are of no concern to His Majesty's Government, even if as advantageous as those obtained by the latter; but, except as the result of arbitration, they can not assent to the doctrine that, in cases like the present, identic treatment should be accorded to belligerents and nonbelligerents.

An arrangement by which the claims of the blockading powers should be extinguished in six or seven years would, we believe, leave it possible for a similar settlement to be made with the other powers. Your Excellency should make a further attempt, in concert with your German and Italian colleagues, to arrive at a settlement such as I have indicated before acting on the instructions contained in my telegram of the 30th ultimo.

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*Extract from the London Gazette of February 17, 1903.*

No. 43.]

It is hereby notified that the Marquis of Lansdowne, K. G., His Majesty's principal secretary of state for foreign affairs, has received through the Lords Commissioners of the Admiralty, a telegraphic dispatch from Vice-Admiral Sir Archibald Douglas, commander in chief on the North American and West Indies Station, announcing that he has issued a notification to the effect that the blockade of the ports of La Guaira, Carenero, Guanta, Cumana, Carupano, and the mouths of the Orinoco, by a British naval force, established on the 20th December, 1902 (of which notice was given in the London Gazette, of that date), is raised from midnight 14th-15th February.

FOREIGN OFFICE, *February 17, 1903.*

## THE CASE ON BEHALF OF GERMANY.

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On the 7th day of December, 1902, the German chargé d'affaires in Caracas handed to the Government of the United States of Venezuela the ultimatum—the full text of which is given in the appendix to this case—demanding, on behalf of the Government of His Majesty the German Emperor, a satisfactory settlement of certain German claims against the Venezuelan Government. This document shows that the Venezuelan Government have treated those claims, especially those which arose out of the recent civil wars in Venezuela, in such a manner as to leave no hope of their being settled satisfactorily without diplomatic support. The negotiations which were accordingly carried on with the Venezuelan Government could not, however, lead to any result, were it only for the reason that Venezuela maintained that, according to the principles of the laws of the country, the settlement of foreign claims arising out of civil wars could not be effected by diplomatic means.

Similar claims had been made against Venezuela by Great Britain without satisfaction being obtained. The British Government, therefore, on the 7th of December, 1902, on their part, also delivered an ultimatum to the Venezuelan Government.

As no satisfactory answer was given to these ultimata, in order to enforce the above-mentioned demands the ports of Venezuela were placed under blockade against the ships of all nations by the naval forces of Germany and Great Britain. Italy, whose claims against Venezuela were likewise not satisfied, took part in this blockade.

The Venezuelan Government having expressed its desire for a settlement of these disputes, negotiations were entered into at Washington between the representatives of the three interested powers and Venezuela. These negotiations led to the signing of a German, a British, and an Italian protocol on the 13th of February, 1903.

By article 1 of the appended copy of the German protocol, the Venezuelan Government declared that they recognized, in principle, the justice of the claims which had been preferred by the German Government. As security for the payment of those claims, for which

no other mode of settlement was provided in articles 2 and 7, 30 per cent of the customs revenues of the ports of La Guaira and Puerto Cabello were to be assigned by article 5. Out of the same 30 per cent, under the protocols concluded with Great Britain and Italy, the similar claims of these two powers were to be met.

In the course of the negotiations regarding the hypothecation of those customs revenues, Venezuela demanded that the 30 per cent should at the same time and in the same manner be employed for the satisfaction of the corresponding claims of the other powers, while Germany, Great Britain, and Italy maintained their right to have their claims satisfied out of these customs revenues in priority to the other creditor powers. As an agreement could not be arrived at on this point, it is provided in article 5 of the German protocol and likewise in the British and Italian protocols that the distribution of the customs revenues among the interested powers should, in default of a special arrangement, be determined by the permanent tribunal at The Hague. Venezuela thereupon came to an agreement with a number of other powers respecting the settlement of their claims and promised that those claims also should be satisfied out of the 30 per cent, subject to the above-mentioned proviso.

As under these circumstances an agreement as to the distribution of the customs revenues was not arrived at, three further agreements were on the 7th of May, 1903, concluded by Germany, Great Britain, and Italy with Venezuela, by which the matter in question was definitely submitted to The Hague Tribunal. A copy of the German agreement of reference is appended. Similar contracts were afterwards concluded with the other creditor powers.

According to paragraph 1 of article 1 of the German, British, and Italian agreements of reference, The Hague Tribunal has, in the first place, only to decide the question as to whether or not the three powers are entitled to preferential or separate payments out of the customs revenues. In case, however, this question should be decided against these powers, the tribunal would have, according to paragraph 3 of article 1, further to declare how the above-mentioned customs revenues should be distributed amongst all the creditor powers.

Whilst Germany claims to be paid at the same time as Great Britain and Italy out of the customs revenues of La Guaira and Puerto Cabello assigned for the payment of Venezuelan creditors, in priority to the other creditor powers, she believes that she can adduce, in support of her claim, considerations both of law and equity.

I. Looked at from a purely legal standpoint, the right of the blockading powers flows from the three following considerations: (1) From the negotiations previous to the signature of the protocol

of the 13th February, 1903. (2) From the steps taken by the blockading powers to enforce their claims. (3) From the natural obligation on the part of the Venezuelan Government to pay the expenses incurred by the blockading powers.

As to 1. The following appears from the negotiations between Germany and Venezuela: In the ultimatum of the 7th December, 1902, the Government of the former demanded from the Venezuelan Government that they would admit, in principle, the justice of the German claims and would be ready to have their amount and the security for their payment determined by a mixed commission. After the blockading powers began to take measures for the enforcement of their demands on Venezuela, President Castro proposed, through the Government of the United States of America, a reference to arbitration (cf. the appended extract of a memorandum from the ambassador of the United States at Berlin of the 13th December, 1902). In answer to this proposal the German Government, in their memorandum of the 22d December, 1902, transmitted through the ambassador of the United States at Berlin, expressly demanded in paragraph 3 that the tribunal of arbitration should determine not only the justice of the separate claims but also the mode and means of satisfying them and the security for such satisfaction. Thereupon President Castro, by telegram addressed to the Government of the United States of America and transmitted to the German Government through the United States ambassador at Berlin in his dispatch of the 7th January, 1903, of which a copy is appended, admitted, in principle, the justice of the claims of the blockading powers and put forward, as the only reason why they had not been satisfied, the fact of civil war having broken out in Venezuela. As this explanation did not seem satisfactory, the German Government, in their memorandum of the 5th January, 1903, transmitted through the ambassador of the United States at Berlin, a copy of which is appended, laid down as a condition precedent to any further negotiations unconditional compliance with the above-mentioned demands. Thereupon President Castro, according to a dispatch of the ambassador of the United States of America at Berlin of January 9, 1903, of which a copy is appended, gave the assurance that he would comply with those demands, and, at the same time, empower his representative to declare that the security for the satisfaction of the German and British claims should be the Venezuelan customs. Thus the Venezuelan Government, before any further negotiations were entered into, undertook to satisfy the claims of the blockading powers as determined by arbitration and to give the Venezuelan customs as security.

This undertaking would, however, not be fulfilled if the 30 per cent of the customs of La Guaira and Puerto Cabello were distributed in equal shares among all the creditors of Venezuela.

The 30 per cent amounted for the month of March, 1903, to 403,227.75 bolivars; for the month of April, 1903, to 312,000 bolivars; for the month of May, 1903, to 311,986 bolivars; for the month of June, 1903, to 290,195.45 bolivars; for the month of July, 1903, to 436,339 bolivars. The total for the five months being about 1,754,000 bolivars; it appears that the proceeds in twelve months would amount to about 4 million bolivars. In estimating the real average annual proceeds of the Venezuelan customs it must, however, be taken into consideration that in all probability the importation of foreign goods immediately after the blockade was above the average. Now, the claims preferred by all the creditor powers come to about 190 million bolivars, of which Germany's share is 6 millions. Therefore, if all the claims preferred were to be admitted, the amounts offered for their satisfaction would in reality not mean an amortization of the capital, but merely a nominal payment equal to about 2 per cent per annum of the total amount of the claims. But even if a considerable part of the claims should not be admitted, the remaining amount would be so large that after all the amortization of the capital would not be effected within a reasonable time. It is therefore apparent that such an arrangement would not constitute a satisfaction of the claims of the blockading powers as promised by President Castro.

Consequently, as soon as the Venezuelan representative explained that the 30 per cent were to be distributed equally among all the creditors, the blockading powers entered a protest. This protest is preserved intact in the protocol of the 13th February, 1903, and must stand entirely unaffected by any agreements which the Venezuelan Government may have entered into with other creditor powers. For the Venezuelan Government was not justified in making any arrangements with other powers by which the engagements previously entered into with the blockading powers would be impaired. Moreover, the Venezuelan Government was by no means compelled to give the other creditor powers a share in the 30 per cent, as it has other ample revenues out of which their claims may be satisfied. For, even as regards the customs revenues of the ports of La Guaira and Puerto Cabello, there remain for the Venezuelan Government 64.8 per cent over and above the 30 per cent and the 5.2 per cent reserved for the interest on the so-called diplomatic debt. Further, the Venezuelan Government, on the 16th of February, 1903, i. e., after the execution of the above-mentioned agreements with the blockading powers, increased the duties by 30 per cent, and consequently, on the whole, the revenues of the Government have not diminished. From all this it follows that the agreements entered into by the Venezuelan Government with the other creditor powers

can not affect the right of the blockading powers to priority in the distribution of the 30 per cent.

2. A further justification of the claim of the blockading powers lies in the steps taken by them to enforce their claims, in particular in the risk and expense incurred by them in so doing. In the first place, Germany, in order to enforce her claims, had to take comprehensive and energetic diplomatic action by which for some years her friendly relations with Venezuela were adversely affected. Furthermore, the subsequent military operations which brought about the state of war with Venezuela endangered the German men-of-war participating in the action and their crews, and involved considerable expense which has not been refunded by Venezuela. A further risk Germany had to run by exposing her subjects to acts of violence against them on the part of the Venezuelan authorities, and German and British subjects residing in Venezuela were, in fact, contrary to the principles of international law, imprisoned and only set free owing to the friendly intercession of the Government of the United States of America. At the same time Germany had to take into consideration that her commercial relations with Venezuela would, for a term of years, be adversely affected by her military operations.

Those operations in which risk and expense were incurred must, even if natural justice alone is considered, give the blockading powers a preferential right to that security which was obtained as the result of the steps taken by them to enforce their demands. This result, however, is the hypothecation of the 30 per cent of the customs which would, undoubtedly, not have been affected but for the military operations instituted against Venezuela. The other creditor powers have neither instituted military operations nor have they run any risk nor incurred any expense. Therefore, to grant them equal rights in the 30 per cent which have been set aside as a security for the claims of the blockading powers, would mean nothing less than robbing the blockading powers of a part of the result of their operations, without any reason based either on law or equity. It is a generally adopted principle both of law and practice that only he who sows is entitled to reap; in other words, that no one is entitled to participate in the results of a war but those who took part in the operations.

3. A third justification for the claim of the blockading powers lies in the natural obligation of Venezuela to refund the expenses incurred by the former in instituting and maintaining the blockade. It is clear that the blockading powers are entitled by international law to require Venezuela to pay all the expenses incurred by them as a result of their military operations, on the same principle that the debtor is generally obliged to pay the costs incurred by the creditor in enforcing payment of his debt. If, in their agreement with Vene-



zuela, the blockading powers, in consideration of the financial condition of Venezuela have not insisted on such a claim, they have done so only on the tacit understanding that they should receive a real and substantial and not merely a nominal security for the satisfaction of their claims. Real satisfaction would, however, certainly not be given, as is proved above, if the other creditor powers were to be granted equal rights in the 30 per cent of the customs revenues.

The fact that the expenses incurred by the latter through their military operations have not been refunded would, moreover, form a further justification for their claim if in the opinion of the court of arbitration the various reasons mentioned above should not be deemed sufficient. Even if the contention of the blockading powers for preferential satisfaction be not upheld by the court, and if the other creditor powers were to share in the security of the 30 per cent, the latter would, for that purpose, have to declare their willingness to pay their share of the expenses incurred by the blockading powers and to refund it to those powers without undue delay. If the other powers claim the right to share equally in the advantages secured by the blockading powers for their claims, it is clear that, according to every principle of law and equity, they will have to refund part of the expenses incurred while the blockading powers acted as "*negotiorum gestores*" for them.

II. The claim of the blockading powers appears to be, moreover, well founded on the ground of fairness and equity.

The other creditor powers owe it exclusively to the operations of the blockading powers that Venezuela has consented to a settlement on diplomatic grounds of all claims against her, and has given, if only in part, security for the satisfaction of those claims.

It is a well-established fact that the Venezuelan Government, in every case where a foreign power preferred a claim against them, have invariably resorted to the argument that the laws of Venezuela would not admit negotiations of a diplomatic character for the settlement of claims arising out of civil wars. That it has been impossible to induce Venezuela by ordinary diplomatic methods to give up this argument has been amply proved by the position which she maintained in the negotiations for the settlement of the claims arising out of the civil wars of 1898 to 1900. All the protests of Germany, Great Britain, Italy, the United States of America, Spain and the Netherlands were of no avail. Moreover, the earlier German proposals to have the matter referred to the court of arbitration at The Hague or to have it investigated by mixed commissions were, as were even the ultimatums of the three blockading powers, persistently refused. That Venezuela has come to change her position and to conclude agreements, with the blockading powers as well as with the

other creditor powers, for a settlement of their claims through mixed commissions, is entirely due to the military operations of the blockading powers. It is; therefore, through the action of these powers that an amicable arrangement with Venezuela has been effected which involves a recognition by Venezuela of the principles of international law and by which all the creditor powers have profited equally.

The blockading powers having, at the same time, induced Venezuela to give security for the satisfaction of all claims preferred against her by hypothecating part of her customs revenues, it is manifestly fair that the other creditor powers should not share in such security to the prejudice of the blockading powers. In other words, that blockading powers should enjoy preferential satisfaction of their claims from the customs revenues.

In the name of the Imperial Government it is, therefore, respectfully submitted:

That it may please the high court of arbitration to decide that the 30 per cent of the customs revenues of the ports of La Guaira and Puerto Cabello, which have been set apart for the satisfaction of the claims of the creditors of Venezuela, shall be assigned in full to Germany, Great Britain, and Italy until the claims of those powers as fixed by the mixed commissions shall have been entirely satisfied.

## APPENDIX TO THE GERMAN CASE.

[Translation.]

No. 1.]

GERMAN LEGATION,  
*Caracas, December 7, 1902.*

In the name of the Government of His Majesty, the German Emperor, I have the honor to make the following communication to the Government of the United States of Venezuela.

The Imperial Government was duly informed of the contents of the note from the Venezuelan ministry for foreign affairs of the 9th of May last. In this note the Venezuelan Government refused to comply with the demands of the Imperial Government for the settlement of the German claims arising out of the civil wars of 1898 to 1900, and in doing so referred to the reasons they had already given at a former date. The Imperial Government have again considered these reasons and are unable to admit their validity.

The Government of the Republic point out in the first place that by the laws obtaining in Venezuela a settlement of foreign war claims diplomatically is forbidden. Thereby they establish the proposition that diplomatic intervention can be excluded by local legislation. This proposition is not in accordance with international law, as the question as to whether such intervention is permissible or not, must be decided not by local laws but by the principles of international law.

The Venezuelan Government, in declining to allow claims to be diplomatically supported, rely further upon article 20 of the treaty of friendship, commerce, and navigation of July 23, 1892, between the German Empire and Colombia. But this reference does not appear to be pertinent, as in the first place the treaty in question is only good as between the Empire and Colombia, and secondly, according to paragraph 3 of the article mentioned, nothing stands in the way of the diplomatic support of German claims arising out of the action of the Colombian Government or their organs. Moreover, the assertion of the Venezuelan Government, that foreign claims arising out of the Venezuelan civil wars have never been settled diplomatically, is also incorrect. For, apart from agreements of a corresponding nature which were made by Venezuela in 1885 with France, and in 1898 with Spain, a formal convention was signed in particular on

February 6, 1896, by the German minister resident at Caracas and the Venezuelan minister of finance, on behalf of their governments, for the settlement of German claims arising out of the civil war of 1892.

In the same way no importance can be attached to the further contention of the Venezuelan Government that diplomatic support of the present claims is not permissible, because they themselves, by the decree of January 24, 1901, have opened a suitable road for settlement. For the proceedings laid down in the decree do not, as has frequently been pointed out to the Government, provide sufficient guarantee for an equitable settlement of these claims. First of all, according to the decree, claims arising out of the period before May 23, 1899—i. e., before the appointment of the present President of the Republic—are not to be taken into consideration, whereas Venezuela is self evidently also responsible for the actions of her former Governments. Then all diplomatic protest against the verdicts of the Commission appointed to decide as to the claims is excluded, appeal to the Venezuelan supreme court of justice alone being allowed, although the judicial officers in Venezuela, as has been shown in individual cases, are, as a matter of fact, dependent upon the Government, and may, as occasion arises, be removed from their places without further ado. Finally, the claims that are decided to be just by the Commission, are to be paid by bonds of a revolution debt to be newly floated, which, according to experience up to date, would be almost valueless.

As a matter of fact the action taken by the Venezuelan Government has failed to lead to a settlement of the claims that is in any way satisfactory. In particular the individual German claims that have been submitted to the commission have partly been refused without further ado, and partly reduced in an evidently arbitrary manner. Moreover, the claims admitted by the commission have not by any means been paid, but the injured parties have been referred to a suitable proposal which will be laid before Congress at a later date.

After various attempts to induce the Government of the Republic to alter the decree, in the points mentioned, had failed the Imperial Government were compelled themselves to examine the claims of their nationals, and, in so far as they were thereby established, to lay them directly before the Venezuelan Government. It is true that the latter thereupon gave it to be understood that they would bring about a satisfactory settlement of the matter by Congress. The law passed by the latter, however, in the spring of this year, only repeated the insufficient provisions of the decree of January 24, 1901, and is only to apply moreover to those claims which could not be submitted at the proper time to the commission appointed by the decree.

The further correspondence was conducted in part by the Government of the Republic in an almost insulting tone, and finally they published the documents in question, among them even those that were marked as confidential, without the consent of the Imperial Government, and with the addition of a memorandum couched in offensive terms.

Although the Imperial Government are honestly inspired by the wish to maintain their hitherto friendly relations with the Venezuelan Republic, and although it is far from their intention to infringe upon the national independence of that State or to interfere in its internal arrangements, yet they can only regard in the action taken by the Venezuelan Government an attempt to deny to the German claims the settlement to which they are entitled by international law, and they consider themselves, on their side, compelled to endeavor to obtain that settlement in a decided manner.

The Imperial Government have therefore instructed me to request the Venezuelan Government to provide without delay for the satisfaction of the German claims, which, according to my note of December 31 last, amount to 1,718,815.67 bolivars.

The treatment of the German war claims by the Government of the Republic has moreover induced the Imperial Government to consider that the other claims of their nationals against Venezuela also require their support if they are to be satisfactorily settled. Under this head come the German claims arising out of the present civil war, the claims of German firms on account of the building of the slaughterhouse in Caracas, and those of the German Great Venezuelan Railway for interest and amortisation of their title to the 5 per cent Venezuelan loan of 1896, which was given them in lieu of a guarantee of interest. On behalf of the Imperial Government I have therefore further to request the Venezuelan Government to give an assurance at an early date that they recognize in principle the justice of these claims, and that they are ready to accept the decision of a mixed commission which shall ascertain and certify them in detail.

The Government of His Majesty hope that the Government of the Republic will meet the just demands of Germany and not compel the Imperial Government themselves to see that these claims are settled after the lapse of the period mentioned.

The Imperial Government also consider it their duty to add that they have been informed by the British Government of their claims against Venezuela, and that both Governments have agreed to proceed conjointly with a view to obtain the settlement of all their claims.

I avail, etc.,

VON PILGRIM-BALTAZZI.

Am 7. Dezember 1902 hat der deutsche Geschäftsträger in Caracas der Regierung der Vereinigten Staaten von Venezuela das in Abschrift anliegende Ultimatum überreicht, worin er im Namen der kaiserlich deutschen Regierung eine befriedigende Regelung der von Deutschland gegen die Republik Venezuela erhobenen Reklamationen verlangte. Wie sich aus diesem Schriftstück ergibt, hatte die venezolanische Regierung diese Reklamationen, insbesondere die deutschen Schadensersatzansprüche aus den letzten venezolanischen Bürgerkriegen, in einer Weise behandelt, dass auf deren befriedigende Erledigung ohne eine diplomatische Einwirkung nicht zu rechnen war. Die deswegen mit der Regierung der Republik geführten Verhandlungen hatten aber schon aus dem Grunde zu keinem Ergebnisse führen können, weil diese den Standpunkt vertrat, dass in Venezuela mit Rücksicht auf die dortigen landesrechtlichen Vorschriften eine Regelung fremder Kriegerklamationen auf dem diplomatischen Wege ausgeschlossen sei.

Ähnliche Beschwerden wie Deutschland hatte auch Grossbritannien gegen Venezuela erhoben, ohne deren Erledigung erreichen zu können. Die britische Regierung liess daher am 7. Dezember 1902 der venezolanischen Regierung gleichfalls ein Ultimatum überreichen.

Da auf beide Ultimaten eine zufriedenstellende Antwort nicht erfolgte, ist zur Durchsetzung der erwähnten Forderungen von den Seestreitkräften Deutschlands und Grossbritanniens die Blockade über venezolanische Häfen gegen die Schiffe aller Nationen verhängt worden. An dieser Blockade hat sich auch Italien beteiligt, dessen Ansprüche gegen Venezuela ebenfalls nicht befriedigt worden waren.

Auf Wunsch der venezolanischen Regierung haben darauf zur Beilegung dieser Streitigkeiten in Washington Verhandlungen zwischen Vertretern der drei beteiligten Mächte und Venezuelas stattgefunden, die am 13. Februar 1903 zur Zeichnung eines deutschen, eines britischen und eines italienischen Protokolls geführt haben.

Nach Artikel 1 des in Abschrift angeschlossenen deutschen Protokolls hat die venezolanische Regierung im Prinzip die von Deutschland erhobenen Reklamationen als berechtigt anerkannt. Als Sicherheit für die Bezahlung derjenigen Forderungen, für welche nicht in den Artikeln 2 und 7 eine anderweitige Erledigung vorgesehen war, sollen nach Artikel 5 30 Procent der Zolleinkünfte der Häfen von La Guaira und Puerto Cabello dienen. Aus denselben 30 Procent sollen nach den mit Grossbritannien und Italien abgeschlossenen Protokollen auch die gleichartigen Forderungen dieser beiden Mächte befriedigt werden.



Bei den Verhandlungen über die Verpfändung dieser Zolleinkünfte hatte Venezuela verlangt, dass die 30 Procent gleichzeitig in derselben Weise zur Befriedigung der entsprechenden Forderungen anderer Mächte verwendet werden sollten, während Deutschland, Grossbritannien und Italien den Anspruch erhoben, aus diesen Einkünften vor den übrigen Gläubigermächten befriedigt zu werden. Da über diesen Punkt eine Einigung nicht erzielt werden konnte, ist in Artikel 5 des deutschen Protokolls und ebenso in dem britischen und dem italienischen Protokolle die Verteilung der Zolleinkünfte unter die beteiligten Mächte einem besonderen Abkommen und in Ermangelung eines solchen der Entscheidung des ständigen Schiedshofs im Haag vorbehalten worden. Venezuela hat darauf mit einer Reihe anderer Mächte Vereinbarungen wegen Regelung ihrer Reklamationen getroffen und deren Bezahlung gleichfalls aus den 30 Procent unter dem in Rede stehenden Vorbehalte versprochen.

Da unter diesen Umständen ein Abkommen über die Verteilung der Zolleinkünfte nicht zustande kam, sind am 7. Mai 1903 von Deutschland, Grossbritannien und Italien mit Venezuela drei weitere Verträge abgeschlossen worden, wodurch die vorliegende Frage endgültig dem Haager Schiedsgericht unterbreitet worden ist. Abschrift des deutschen Schiedsvertrags liegt bei. Aehnliche Verträge hat Venezuela sodann auch mit den übrigen Gläubigermächten abgeschlossen.

Nach Artikel 1, Abs. 1, des deutschen, des britischen und des italienischen Schiedsvertrags hat das Haager Schiedsgericht zunächst nur über die Frage der vorzugsweisen oder gesonderten Befriedigung der drei Mächte aus den Zolleinkünften zu befinden. Doch soll es, sofern die Frage zu ungunsten dieser Mächte entschieden werden sollte, nach Artikel 1, Abs. 3, der Verträge auch darüber erkennen, wie die bezeichneten Einkünfte unter alle Gläubigermächte zu verteilen sind.

Indem Deutschland den Anspruch erhebt, zugleich mit Grossbritannien und Italien aus den zur Befriedigung der Gläubiger Venezuelas überwiesenen 30 Procent der Zolleinkünfte von La Guaira und Puerto Cabello vor den übrigen Gläubigermächten befriedigt zu werden, glaubt es für diesen Anspruch sowohl Gründe des Rechtes wie der Billigkeit anführen zu können.

I. Vom Standpunkte des Rechtes lässt sich der Anspruch der Blockademächte aus drei Gesichtspunkten begründen, nämlich einmal aus den mit der venezolanischen Regierung vor Abschluss der Protocolle vom 13. Februar 1903 geführten Verhandlungen, ferner aus der von den Blockademächten zur Durchsetzung ihrer Forderungen entwickelten Tätigkeit, endlich aus der Venezuela an sich obliegenden Verpflichtung zur Tragung der Blockadekosten.

1. Aus den Verhandlungen Deutschlands mit Venezuela ergibt sich folgendes: In dem Ultimatum vom 7. Dezember 1902 hat die deutsche Regierung von der venezolanischen Regierung eine Erklärung des Inhalts verlangt, dass diese die grundsätzliche Berechtigung der deutschen Forderungen anerkenne und bereit sei, wegen deren Feststellung und Sicherstellung im einzelnen die Entscheidung einer gemischten Kommission anzunehmen. Als sodann nach Einleitung der Zwangsmassregeln gegen Venezuela der Präsident Castro durch Vermittelung der Regierung der Vereinigten Staaten von Amerika die Einsetzung einer Schiedsinstanz vorschlug (vergl. den anliegenden Auszug eines Memorandums des Botschafters der Vereinigten Staaten in Berlin vom 13. Dezember 1902), wurde von der Deutschen Regierung in der dem Botschafter übergebenen, in Abschrift angeschlossenen Denkschrift vom 22. Dezember 1902, unter 3 ausdrücklich das Verlangen gestellt, dass diese Schiedsinstanz sowohl über die materielle Berechtigung der einzelnen Forderungen zu entscheiden, als auch die Art und Weise ihrer Befriedigung und Sicherstellung zu bestimmen habe. Der Präsident Castro hat darauf in einem an die Regierung der Vereinigten Staaten gerichteten und der deutschen Regierung mit dem abschriftlich beiliegenden Schreiben des Botschafters vom 7. Januar 1903 mitgeteilten Telegramme die Forderungen der Blockademächte im Prinzip als berechtigt anerkannt und als einzigen Grund für die noch nicht erfolgte Befriedigung den in Venezuela ausgebrochenen Bürgerkrieg angegeben. Da diese Erklärung noch nicht genügend erschien, wurde in der dem Botschafter ferner übergebenen, in Abschrift beigefügten Denkschrift vom 5. Januar 1903 die unbedingte Annahme des vorstehend bezeichneten Verlangens als Voraussetzung für weitere Verhandlungen aufgestellt, worauf der Präsident Castro nach dem abschriftlich anliegenden Schreiben des Botschafters vom 9. Januar 1903 eine entsprechende Zusicherung erteilte und gleichzeitig durch seinen Bevollmächtigten erklären liess, dass die venezolanischen Zolleinkünfte zur Befriedigung der deutschen und der britischen Forderungen dienen sollten. Hiernach hatte Venezuela vor Eintritt in die weiteren Verhandlungen die Verpflichtung übernommen, gemäss der Entscheidung einer Schiedsinstanz die Forderungen der Blockademächte zu befriedigen und diese Befriedigung durch die Zolleinkünfte sicherzustellen.

Diese Verpflichtung würde aber nicht erfüllt werden, wenn die überwiesenen 30 Procent der Zolleinkünfte von La Guaira und Puerto Cabello gleichmässig unter alle Gläubiger Venezuelas verteilt würden.

Die 30 Procent haben ergeben:

|                               | Bolivares.   |
|-------------------------------|--------------|
| Für den Monat März 1903.....  | 403, 227. 75 |
| Für den Monat April 1903..... | 312, 000. 00 |
| Für den Monat Mai 1903.....   | 311, 986. 00 |
| Für den Monat Juni 1903.....  | 290, 195. 45 |
| Für den Monat Juli 1903.....  | 436, 339. 00 |

Somit für fünf Monate rund..... 1, 754, 000. 00

so dass jährlich auf ein Enträgnis von etwa 4 Millionen Bolivares gerechnet werden kann. Dabei erscheint es zweifelhaft, ob die vorstehend aufgeführten Beträge die wirklichen Durchschnittssätze dartstellen, da nach Aufhebung der Blockade die Einfuhr den Durchschnitt beträchtlich überstiegen haben dürfte. Demgegenüber belaufen sich die angemeldeten Reklamationen sämtlicher Gläubigermächte auf rund 190 Millionen Bolivares, woran Deutschland mit rund 6 Millionen beteiligt ist. Sollten daher diese Forderungen der Hauptsache nach für begründet erachtet werden, so würden die zu ihrer Befriedigung ausgeworfenen Beträge nicht eine Tilgung, sondern nur eine etwa 2 prozentige Verzinsung der Schuld darstellen. Aber auch wenn ein erheblicher Teil der Forderungen nicht anerkannt werden sollte, so dürfte doch ein so erheblicher Betrag übrig bleiben, dass, sofern dieser auch nur mit 3 Procent verzinst wird, die Amortisation in absehbarer Zeit nicht erfolgen wird. Es bedarf keiner Ausführung, dass ein solches Ergebnis sich nicht als eine Befriedigung der Forderungen der Blockademächte im Sinne der vom Präsidenten Castro erteilten Zusicherungen darstellen würde.

Dementsprechend haben die Blockademächte, sobald der venezolanische Bevollmächtigte erklärte, dass die 30 Procent zur Befriedigung sämtlicher Gläubigermächte bestimmt seien, hiergegen Protest erhoben. Diesen Protest haben sie sich in den Protokollen vom 13. Februar 1903 offen gehalten und müssen ihn auch gegenüber den Zugeständnissen, die Venezuela in den mit den übrigen Gläubigermächten abgeschlossenen Verträgen gemacht hat, entschieden aufrecht erhalten. Denn einmal war Venezuela nicht berechtigt, anderen Mächten gegenüber Versprechungen abzugeben, wodurch die den Blockademächten früher erteilten Zusicherungen wegen Befriedigung ihrer Forderungen hinfällig wurden. Sodann war Venezuela auch nicht genötigt, die übrigen Gläubigermächte auf die Procent zu verweisen, da es sonst noch über genügende Einnahmen verfügt, aus denen diese Mächte befriedigt werden können. Allein aus den Zolleinkünften von La Guaira und Puerto Cabello verbleiben der venezolanischen Regierung noch 64.8 Procent, da von diesen Zöllen nur die zur Verzinsung der sogenannten diplomatischen Schuld bestimmter 5.2 Procent und die jetzt verpfändeten 30 Procent abgehen. Ueberdies hat Venezuela durch Dekret vom 16. Februar 1903, also

nach Abschluss der Verträge mit den Blockademächten, seine Zölle um 30 Procent erhöht, so dass seine Staatseinnahmen trotz der Verpfändung der Zolleinkünfte überhaupt keine Verringerung erlitten haben. Aus alledem folgt, dass die zwischen Venezuela und den übrigen Gläubigermächten abgeschlossenen Verträge das Recht der Blockademächte auf eine vorzugsweise Befriedigung aus den 30 Procent nicht berühren können.

2. Ein weiterer Grund für den Anspruch der Blockademächte ergibt sich aus der von ihnen aufgewendeten Tätigkeit, insbesondere aus dem mit ihrem Borgehen verbundenen Risiko und den dadurch verursachten Kosten. Deutschland hat zur Durchführung seiner Forderungen zunächst eine umfangreiche und energische diplomatische Aktion ins Werk gesetzt, die mehrere Jahre hindurch seine freundschaftlichen Beziehungen zu Venezuela gefährdet hat. Sodann erfolgte die militärische Aktion, die den Kriegszustand gegen Venezuela herbeiführte und Gefahren für die beteiligten deutschen Kriegsschiffe und deren Besatzung mit sich brachte. Endlich sind Deutschland durch die Aktion nicht unerhebliche Kosten entstanden, für die es von Venezuela einen Ersatz nicht erhalten hat. Ein Risiko lief Deutschland ferner insofern, als seine Angehörigen infolge seines Vorgehens Gewaltmassregeln der venezolanischen Machthaber ausgesetzt waren, wie denn in der Tat die in Venezuela lebenden Deutschen und Engländer gegen die Grundsätze des Völkerrechts gefangen genommen und nur auf Verwendung der Vereinigten Staaten von Amerika wieder in Freiheit gesetzt wurden. Auch musste Deutschland damit rechnen, dass der Eindruck seines Vorgehens in Venezuela den deutsch-venezolanischen Handelsverkehr auf Jahre hinaus ungünstig beeinflussen konnte.

Eine mit solchem Risiko und solchen Kosten verbundene Aktion muss schon nach dem natürlichen Rechtsgeföhle den Blockademächten ein vorzugsweises Anrecht auf das Ergebnis ihrer Tätigkeit gewähren. Dieses Ergebnis ist aber die Verpfändung der 30 Procent der Zolleinkünfte, da diese zweifellos nur auf Grund der gegen Venezuela durchgeführten Zwangsmassregeln erfolgt ist. Die übrigen Gläubigermächte haben eine entsprechende Tätigkeit nicht entfaltet; sie sind weder ein Risiko gelaufen noch haben sie irgendwelche Aufwendungen gemacht. Falls ihnen daher an den verpfändeten Zolleinkünften dieselben Rechte wie den Blockademächten eingeräumt würden, so hiesse das nichts anderes als letzteren einen Teil der Früchte ihrer Tätigkeit ohne jeden Rechtsgrund zu entziehen. Rechtlich und praktisch ist aber allgemein der Grundsatz in Geltung, dass niemand ernten soll, wo ein anderer gesät hat, mit anderen Worten, dass aus dem Ergebnis eines Krieges unmittelbar nur die Kriegführenden selbst, nicht aber die Zuschauer Rechte herleiten können.

3. Der Anspruch der Blockademächte dürfte endlich aus der natürlichen Verpflichtung Venezuelas zur Tragung der Blockadekosten herzuleiten sein. Nach völkerrechtlichen Grundsätzen waren die Blockademächte an sich berechtigt, von Venezuela die Erstattung der ihnen durch ihre Aktion erwachsenen Kosten als Kriegskosten zu verlangen, wie denn auch nach prozessrechtlichen Grundsätzen der Schuldner im allgemeinen die Kosten zu tragen hat, die dem Gläubiger durch die Beitreibung seiner Forderung entstehen. Wenn die Blockademächte von der Geltendmachung eines solchen Anspruchs in den Abkommen mit Venezuela im Hinblick auf dessen Finanzlage abgesehen haben, so ist dies selbstredend nur unter der stillschweigenden Voraussetzung geschehen, dass ihnen eine wirkliche und nicht nur eine scheinbare Befriedigung ihrer Forderungen zu teil werden würde. Von einer tatsächlichen Befriedigung kann aber, wie gezeigt, keine Rede sein, wenn den übrigen Gläubigermächten die verpfändeten Zolleinkünfte in derselben Weise zu gute kommen würden, wie den Blockademächten.

Aus der Tatsache, dass den Blockademächten die durch ihre Aktion erwachsenen Kosten nicht erstattet worden sind, lässt sich übrigens für den Fall, dass die vorstehenden Rechtsgründe von dem Schiedsgerichte nicht als ausreichend anerkannt werden sollten, noch ein anderer Rechtsschluss ziehen. Sollte nämlich diesen Mächten ein Anspruch auf vorzugsweise Befriedigung aus den verpfändeten Zolleinkünften nicht zuerkannt werden, so würden doch die übrigen Gläubigermächte bei der Verteilung dieser Einkünfte nur unter der Voraussetzung zuzulassen sein, dass sie sich zur Tragung eines entsprechenden Teiles der Blockadekosten bereit erklären und diesen Teil den Blockademächten alsbald ersetzen. Denn wenn sie an den von den Blockademächten errungenen Vorteilen teilnehmen wollen, so würden letztere gewissermassen als Geschäftsführer ohne Auftrag (*negotiorum gestores*) anzusehen sein und daher nach allgemeinen Rechtsgrundsätzen einen teilweisen Ersatz Aufwendungen verlangen können.

II. Vom Standpunkte der Billigkeit kommt für den Anspruch der Blockademächte folgender Gesichtspunkt in Betracht.

Die übrigen Gläubigermächte haben es ausschliesslich dem Vorgehen der Blockademächte zu danken, dass Venezuela sich mit einer Regelung seiner Reklamationen auf diplomatischen Wege einverstanden erklärt und für deren Bezahlung wenigstens eine teilweise Sicherheit bestellt hat.

Wie bekannt, hatte die venezolanische Regierung allen Mächten gegenüber den Standpunkt vertreten, dass ihre landesrechtlichen Vorschriften jede diplomatische Behandlung fremder Kriegsreklamationen ausschliessen. Dass Venezuela von diesem Standpunkt auf dem Wege der Verhandlungen nicht abzubringen war, hat insbeson-



dere sein Verhalten bei Erledigung der Reklamationen aus den Bürgerkriegen von 1898 bis 1900 bewiesen, indem es sowohl die Proteste Deutschlands, Grossbritanniens, Italiens, der Vereinigten Staaten von Amerika, Spaniens und der Niederlande unbeachtet gelassen, als auch die früheren deutschen Vorschläge auf Ueberweisung der Angelegenheit an das Haager Schiedsgericht oder auf Prüfung der Reklamationen durch gemischte Kommissionen zurückgewiesen und schliesslich sogar die Ultimaten der drei Blockademächte abgelehnt hat. Dieses Verhalten Venezuelas hat sich infolge der von den Blockademächten angewandten Zwangsmassregeln geändert, denn Venezuela hat sich nummehr dazu verstanden, sowohl mit den Blockademächten wie mit den übrigen Gläubigermächten Abkommen zur Regelung ihrer Reklamationen durch gemischte Kommissionen zu treffen. Die Blockademächte haben sich daher das Verdienst erworben, eine Verständigung mit der venezolanischen Regierung zu erzielen, welche eine Anerkennung der Grundsätze des Völkerrechts durch Venezuela in sich schliesst, und diese Anerkennung ist sämtlichen Gläubigermächten gleichmässig zugute gekommen.

Wenn es den Blockademächten weiter gelungen ist, die venezolanische Regierung auch zu einer Sicherstellung der Reklamationen durch Verpfändung eines Teiles ihrer Zolleinkünfte zu veranlassen, so entspricht es schon der Billigkeit, dass die übrigen Gläubigermächte an dieser Sicherstellung nur insoweit teilnehmen, als dadurch die Blockademächte nicht geschädigt werden, mit anderen Worten, dass letztere aus den verpfändeten Zolleinkünften vorweg befriedigt werden.

Namens der kaiserlichen Regierung wird daher beantragt:

Das Schiedsgericht wolle entscheiden, dass die zur Befriedigung der Gläubiger Venezuelas überwiesenen 30 Procent der Zolleinkünfte der Häfen von La Guaira und Puerto Cabello dem Deutschen Reiche, Grossbritannien und Italien bis zur Tilgung ihrer durch die gemischten Kommissionen festgesetzten Ansprüche gegen Venezuela vollständig überwiesen werden.

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#### APPENDIX.

No. 1.]

KAISERLICH DEUTSCHE MINISTER-

RESIDENTUR FÜR VENEZUELA,

*Caracas, den 7. Dezember 1902.*

Im Namen der Regierung Seiner Majestät des Deutschen Kaisers habe ich die Ehre, der Regierung der Vereinigten Staaten von Venezuela die nachstehende Mitteilung zu machen.

Die kaiserliche Regierung hat seinerzeit von dem Schreiben des Ministeriums der auswärtigen Angelegenheiten der Republik Vene-



zuela vom 9. Mai d. J. Kenntnis erhalten. In diesem Schreiben hat die venezolanische Regierung die Forderungen der kaiserlichen Regierung wegen Befriedigung der deutschen Reklamationen aus den Bürgerkriegen in den Jahren 1898 bis 1900 zurückgewiesen und sich für ihre ablehnende Haltung auf die von ihr bereits früher angeführten Gründe berufen. Die kaiserliche Regierung glaubt diese Gründe auch nach wiederholter Prüfung nicht als stichhaltig anerkennen zu können.

Die Regierung der Republik weist in erster Linie darauf hin, dass in Venezuela mit Rücksicht auf die dortigen landesrechtlichen Vorschriften eine Regelung fremder Kriegsreklamationen auf dem diplomatischen Wege ausgeschlossen sei. Sie stellt damit den Satz auf, dass eine diplomatische Verwendung durch die Landesgesetzgebung ausgeschlossen werden könne. Dieser Satz steht mit dem Völkerrechte nicht im Einklang, da die Frage, ob eine solche Verwendung zulässig ist, nicht nach landesrechtlichen Vorschriften, sondern nach den Grundsätzen des Völkerrechts beurteilt werden muss.

Die venezolanische Regierung beruft sich ferner für die Unzulässigkeit einer diplomatischen Vertretung von Reklamationen auf den Artikel 20 des Freundschafts-, Handels- und Schiffahrtsvertrags zwischen dem Deutschen Reiche und dem Freistaate Columbien vom 23. Juli 1892. Diese Berufung erscheint indes nicht zutreffend, da einmal der in Rede stehende Vertrag nur zwischen dem Reiche und Columbien Recht schafft und ferner nach Absatz 3 des erwähnten Artikels einer diplomatischen Vertretung deutscher Reklamationen wegen der von der columbischen Regierung oder ihren Organen begangenen Handlungen nichts im Wege steht. Ebenso ist die von der venezolanischen Regierung aufgestellte Behauptung, dass die fremden Reklamationen aus den venezolanischen Bürgerkriegen niemals auf dem diplomatischen Wege geregelt seien, nicht richtig. Denn abgesehen von entsprechenden Abmachungen, die Venezuela im Jahre 1885 mit Frankreich und im Jahre 1898 mit Spanien getroffen hat, ist insbesondere am 6. Februar 1896 von dem damaligen deutschen Ministerresidenten in Caracas und dem venezolanischen Finanzminister im Auftrag ihrer Regierungen ein förmliches Abkommen wegen Regelung der deutschen Reklamationen aus dem Bürgerkriege vom Jahre 1892 unterzeichnet worden.

Dem weiteren Einwande der venezolanischen Regierung, dass die diplomatische Vertretung der vorliegenden Reklamationen unzulässig sei, weil sie selbst durch das Dekret vom 24. Januar 1901 einen geeigneten Weg zu deren Regelung eröffnet habe, wird gleichfalls kein Gewicht beigelegt werden können. Denn das in dem Dekrete vorgesehene Verfahren hat, wie der Regierung wiederholt mitgeteilt worden ist, eine genügende Gewähr für eine gerechte Erledigung

dieser Reklamationen nicht geschaffen. Einmal sollen nach dem Dekrete die aus der Zeit vor dem 23. Mai 1899, d. h. vor der Erhebung des gegenwärtigen Präsidenten der Republik herrührenden Schadensersatzansprüche unberücksichtigt bleiben, während Venezuela selbstredend auch für die Handlungen seiner früheren Regierungen einzustehen hat. Sodann ist gegen die Beschlüsse der zur Entscheidung über die Reklamationen eingesetzten Kommission jeder diplomatische Einspruch ausgeschlossen, vielmehr nur die Berufung an den höchsten venezolanischen Gerichtshof zugelassen worden, obwohl die richterlichen Beamten in Venezuela, wie einzelne Fälle gezeigt haben, von der Regierung tatsächlich abhängig und gelegentlich ohne weiteres aus ihrem Amte entfernt worden sind. Endlich sollen die von der Kommission als rechtmässig anerkannten Reklamationen mit Scheinen einer neu zu schaffenden Revolutionsschuld bezahlt werden, die nach den bisherigen Erfahrungen nahezu wertlos sein würden.

In der Tat hat das von der venezolanischen Regierung eingeschlagene Verfahren zu einer irgendwie befriedigenden Erledigung der Reklamationen nicht geführt. Insbesondere sind die vereinzelt bei der Kommission angemeldeten deutschen Forderungen zum Teil ohne weiteres abgewiesen, zum Teil in offenbar willkürlicher Weise herabgesetzt worden. Auch sind die von der Kommission anerkannten Forderungen nicht etwa bezahlt, sondern die Geschädigten auf eine entsprechende, dem Kongress später zu machende Vorlage verwiesen worden.

Nachdem mehrfache Versuche, die Regierung der Republik zu einer Aenderung ihres Dekrets in den angegebenen Punkten zu veranlassen, gescheitert waren, hat die kaiserliche Regierung nicht umhin gekonnt, die Reklamationen ihrer Angehörigen selbst einer Prüfung zu unterziehen, und, soweit sie danach begründet waren, unmittelbar bei der venezolanischen Regierung anhängig zu machen. Die Regierung hat darauf zwar in Aussicht gestellt, eine befriedigende Lösung der Angelegenheit durch ihren Kongress herbeizuführen. Das von diesem im letzten Frühjahr angenommene Gesetz wiederholt indes nur die ungenügenden Bestimmungen des Dekrets vom 24. Januar 1901 und soll sich überdies nur auf solche Reklamationen erstrecken, die der durch das Dekret eingesetzten Kommission nicht rechtzeitig vorgelegt werden konnten.

Den weiteren Schriftwechsel hat die Regierung der Republik zum Teil in einem nahezu beleidigenden Tone geführt und schliesslich die in Rede stehenden Schriftstücke, darunter auch solche, die als vertraulich bezeichnet waren, ohne Einwilligung der kaiserlichen Regierung und unter Hinzufügung einer in verletzenden Form abgefassten Denkschrift veröffentlicht.

So aufrichtig die kaiserliche Regierung von dem Wunsche beseelt

ist, mit der Republik Venezuela die bisherigen freundschaftlichen Beziehungen zu erhalten, und soweit sie davon entfernt ist, der staatlichen Unabhängigkeit dieses Freistaats zu nahe zu treten oder in seine inneren Einrichtungen eingreifen zu wollen, so kann sie doch in dem von der venezolanischen Regierung eingeschlagenen Verfahren nur das Bestreben erblicken, den deutschen Reklamationen die ihnen völkerrechtlich gebührende Regelung zu versagen, und glaubt daher ihrerseits auf die alsbaldige Erledigung dieser Ansprüche in bestimmter Weise hinwirken zu müssen.

Die kaiserliche Regierung hat mich daher beauftragt, an die venezolanische Regierung das Ersuchen zu richten, für die Befriedigung der deutschen Forderungen, die dich nach meinem Schreiben vom 31. Dezember v. J. auf 1,718,815.67 Bolivares belaufen, unverzüglich Sorge zu tragen.

Die Behandlung der deutschen Kriegsreklamationen durch die Regierung der Republik hat die kaiserliche Regierung ferner zu der Auffassung geführt; dass auch die sonstigen Forderungen ihrer Angerhörigen gegen den Freistaat ihres Schutzes bedürfen, um zu einer gerechten Erledigung zu gelangen. In dieser Beziehung kommen in Betracht die deutschen Reklamationen aus dem gegenwärtigen venezolanischen Bürgerkriege, die Forderungen deutscher Firmen aus der Baue des Schlachthofs in Caracas sowie die Ansprüche der deutschen Grossen Venezuela-Eisenbahn auf Verzinsung und Amortisation der ihr als Ablösung einer Zinsgarantie übergebenen Titel der fünfprozentigen venezolanischen Anleihe von 1896. Im Auftrage der kaiserlichen Regierung habe ich daher die venezolanische Regierung weiter zu ersuchen, alsbald eine Erklärung des Inhalts abzugeben, dass sie die grundsätzliche Berechtigung dieser Forderungen anerkennt, und bereit ist, wegen deren Festsetzung und Sicherstellung im einzelnen die Entscheidung einer gemischten Kommission anzunehmen.

Die Regierung Seiner Majestät hofft, dass die Regierung der Republik die berechtigten Ansprüche Deutschlands erfüllen und die kaiserliche Regierung nicht nötigen wird, die Sorge für die Befriedigung dieser Ansprüche nach Ablauf der erwähnten Frist selbst zu übernehmen.

Dabei glaubt die kaiserliche Regierung nicht unerwähnt lassen zu sollen, dass sie durch die britische Regierung auch von deren Forderungen gegen Venezuela Kenntnis erhalten hat, und dass beide Regierungen übereingekommen sind, gemeinsam für die Befriedigung ihrer sämtlichen Forderungen einzutreten.

Genehmigen u. s. w.

VON PILGRIM-BALTAZZI.

## No. 2.

*Protocol between Germany and Venezuela relating to the settlement of the German claims.*

Whereas certain differences have arisen between Germany and the United States of Venezuela in connection with the claims of German subjects against the Venezuelan Government, the undersigned, Baron Speck von Sternburg, His Imperial German Majesty's envoy extraordinary and minister plenipotentiary, duly authorized by the Imperial German Government, and Mr. Herbert W. Bowen, duly authorized by the Government of Venezuela, have agreed as follows:

## ARTICLE 1.

The Venezuelan Government recognize in principle the justice of the claims of German subjects presented by the Imperial German Government.

## ARTICLE 2.

The German claims originating from the Venezuelan civil wars of 1898 to 1900 amount to 1,718,815.67 bolivars. The Venezuelan Government undertake to pay of said amount immediately in cash the sum of £5,500=137,500 bolivars, and for the payment of the rest to redeem five bills of exchange for the corresponding installments payable on the 15th of March, the 15th of April, the 15th of May, the 15th of June, and the 15th of July, 1903, to the Imperial German diplomatic agent in Caracas. These bills shall be drawn immediately by Mr. Bowen and handed over to Baron Sternburg.

Should the Venezuelan Government fail to redeem one of these bills, the payment shall be made from the customs receipts of La Guaira and Puerto Cabello, and the administration of both ports shall be put in charge of Belgian custom-house officials until the complete extinction of the said debts.

## ARTICLE 3.

The German claims not mentioned in the articles 2 and 6, in particular the claims resulting from the present Venezuelan civil war, the claims of the Great Venezuelan Railroad Company against the Venezuelan Government for passages and freight, the claims of the engineer, Carl Henkel, in Hamburg, and of the Beton and Monierbau Company (Limited), in Berlin, for the construction of a slaughter-house at Caracas, are to be submitted to a mixed commission.

Said commission shall decide both whether the different claims are materially well founded and also upon their amount. The Venezuelan Government admit their liability in cases where the claim is for injury

to a wrongful seizure of property, and consequently the commission will not have to decide the question of liability, but only whether the injury to or the seizure of property were wrongful acts and what amount of compensation is due.

#### ARTICLE 4.

The mixed commission mentioned in article 3 shall have its seat in Caracas. It shall consist of two members, one of which is to be appointed by the Imperial German Government, the other by the Government of Venezuela. The appointments are to be made before May 1, 1903. In each case where the two members come to an agreement on the claims their decision shall be considered as final; in cases of disagreement the claims shall be submitted to the decision of an umpire to be nominated by the President of the United States of America.

#### ARTICLE 5.

For the purpose of paying the claims specified in article 3, as well as similar claims preferred by other powers, the Venezuelan Government shall remit to the representative of the Bank of England in Caracas, in monthly installments, beginning from March 1, 1903, 30 per cent of the customs revenues of La Guaira and Puerto Cabello, which shall not be alienated to any other purpose. Should the Venezuelan Government fail to carry out this obligation, Belgian customs officials shall be placed in charge of the customs of the two ports and shall administer them until the liabilities of the Venezuelan Government in respect of the above-mentioned claims shall have been discharged.

Any questions as to the distribution of the customs revenues specified in the foregoing paragraph, as well as to the rights of Germany, Great Britain, and Italy to a separate payment of their claims, shall be determined, in default of another agreement, by the Permanent Tribunal of Arbitration at The Hague. All other powers interested may join as parties in the arbitration proceedings against the above-mentioned three powers.

#### ARTICLE 6.

The Venezuelan Government undertake to make a new satisfactory arrangement to settle simultaneously the 5 per cent Venezuelan loan of 1896, which is chiefly in German hands, and the entire external debt. In this arrangement the State revenues to be employed for the service of the debt are to be determined without prejudice to the obligations already existing.

## ARTICLE 7.

The Venezuelan men-of-war and merchant vessels captured by the German naval forces shall be returned to the Venezuelan Government in their actual condition. No claims for indemnity can be based on the capture and on the holding of these vessels, neither will an indemnity be granted for injury to or destruction of the same.

## ARTICLE 8.

Immediately upon the signature of this protocol the blockade of the Venezuelan ports shall be raised by the Imperial German Government, in concert with the Governments of Great Britain and Italy. Also the diplomatic relations between the Imperial German and the Venezuelan Government will be resumed.

Done in duplicate in German and English texts, at Washington, this thirteenth day of February, one thousand nine hundred and three.

[L. S.]

HERBERT W. BOWEN.

[German text.]

*Protokoll zwischen Deutschland und Venezuela wegen Regelung der deutschen Reklamationen.*

Zwischen dem Kaiserlich Deutschen Ausserordentlichen Gesandten und Bevollmächtigten Minister Herrn Freiherrn Speck von Sternburg als Bevollmächtigten der Kaiserlich Deutschen Regierung und dem Gesandten der Vereinigten Staaten von Amerika Herrn Bowen als Bevollmächtigten der Venezolanischen Regierung ist zur Beilegung der zwischen Deutschland und Venezuela entstandenen Streitigkeiten nachstehendes Protokoll abgeschlossen worden:

## ARTIKEL 1.

Die Venezolanische Regierung erkennt im Prinzip die von der Kaiserlich Deutschen Regierung erhobenen Reklamationen deutscher Untertanen als berechtigt an.

## ARTIKEL 2.

Die deutschen Reklamationen aus den Venezolanischen Bürgerkriegen von 1898 bis 1900 belaufen sich auf 1,718,815.67 Bolivares. Die Venezolanische Regierung verpflichtet sich, von diesem Betrag £5,500=137,500 Bolivares sofort bar zu bezahlen und zur Tilgung des Restes fünf am 15. März, 15. April, 15. Mai, 15. Juni, und 15. Juli 1903 an den Kaiserlich Deutschen Gesandten in Caracas zahlbare Wechsel über entsprechende Teilbeträge einzulösen, die Herr Bowen sofort ausstellen und Herrn Freiherrn von Sternburg übergeben wird.



Sollte die Venezolanische Regierung diese Wechsel nicht einlösen, so soll die Zahlung aus den Zolleinkünften von La Guaira und Puerto Cabello erfolgen, und soll die Zollverwaltung in den beiden Häfen bis zur vollständigen Tilgung der erwähnten Schulden belgischen Zollbeamten übertragen werden.

### ARTIKEL 3.

Die in den Artikeln 2 und 6 nicht erwähnten deutschen Reklamationen, insbesondere die Reklamationen, welche aus dem gegenwärtigen venezolanischen Bürgerkriege herrühren, ferner die Ansprüche der deutschen Grossen Venezuela Eisenbahn-Gesellschaft gegen die Venezolanische Regierung wegen Beförderung von Personen und Gütern, sowie die aus dem Baue eines Schlachthauses in Caracas entstandenen Forderungen des Ingenieurs Carl Henkel in Hamburg und der Aktiengesellschaft für Beton-und Monierbau in Berlin, werden einer gemischten Kommission überwiesen.

Diese Kommission hat sowohl über materielle Berechtigung der einzelnen Forderungen wie über deren Höhe zu entscheiden. Bei den Reklamationen wegen widerrechtlicher Beschädigung oder Wegnahme von Eigentum erkennt überdies die Venezolanische Regierung ihre Haftpflicht im Prinzip an, dergestalt, dass die Kommission nicht über die Frage der Haftpflicht, sondern lediglich über die Widerrechtlichkeit der Beschädigung oder Wegnahme sowie über die Höhe der Entschädigung zu befinden hat.

### ARTIKEL 4.

Die im Artikel 3 erwähnte gemischte Kommission hat ihren Sitz in Caracas. Sie setzt sich zusammen aus je einem von der Kaiserlich Deutschen und der Venezolanischen Regierung zu ernennenden Mitglied. Die Ernennung hat bis zum 1. Mai 1903 zu erfolgen. Soweit sich die beiden Mitglieder über die erhobenen Ansprüche einigen, ist ihre Entscheidung als endgültig anzusehen, soweit eine Einigung unter ihnen nicht zustande kommt, ist zur Entscheidung ein Obmann zuzuziehen, der von dem Präsidenten der Vereinigten Staaten ernannt wird.

### ARTIKEL 5.

Zur Befriedigung der im Artikel 3 bezeichneten Reklamationen sowie der gleichartigen Forderungen anderer Mächte wird die Venezolanische Regierung vom 1. März 1903 ab monatlich dreissig Prozent der Zolleinkünfte von La Guaira und Puerto Cabello unter Ausschluss jeder anderen Verfügung dem Vertreter der Bank von England in Caracas überweisen. Sollte die Venezolanische Regierung dieser Verpflichtung nicht nachkommen, so soll die Zollverwaltung in den beiden Häfen bis zur vollständigen Befriedigung der

vorstehend erwähnten Forderungen belgischen Zollbeamten übertragen werden.

Alle Streitfragen in Ansehung der Verteilung der in Absatz 1 bezeichneten Zolleinkünfte sowie in Ansehung des Rechtes Deutschlands, Grossbritanniens und Italiens auf gesonderte Befriedigung ihrer Reklamationen sollen in Ermangelung eines anderweitigen Abkommens durch den ständigen Schiedshof im Haag entschieden werden. An dem Schiedsverfahren können sich alle anderen interessierten Staaten den genannten drei Mächte gegenüber als Partei beteiligen.

#### ARTIKEL 6.

Die Venezolanische Regierung verpflichtet sich, die zum grössten Teil in deutschen Händen befindliche 5 prozentige venezolanische Anleihe von 1896 zugleich mit ihrer gesamten auswärtigen Schuld in befriedigender Weise neu zu regeln. Bei dieser Regelung sollen die für den Schuldendienst zu verwendenden Staatseinkünfte unbeschadet der diesbezüglich bereits bestehenden Verpflichtungen bestimmt werden.

#### ARTIKEL 7.

Die von den deutschen Seestreitkräften weggenommenen venezolanischen Kriegs- und Handelsfahrzeuge werden in dem Zustande, in dem sie sich gegenwärtig befinden, der Venezolanischen Regierung zurückgegeben. Aus der Wegnahme dieser Schiffe wie aus deren Aufbewahrung können keine Entschädigungsansprüche hergeleitet werden. Auch wird ein Ersatz für Beschädigung oder Vernichtung der Schiffe nicht gewährt.

#### ARTIKEL 8.

Nach Unterzeichnung dieses Protokolls soll die über die venezolanischen Häfen verhängte blockade gemeinsam mit den Regierungen Grossbritanniens und Italiens aufgehoben werden. Auch werden die diplomatischen Beziehungen zwischen der Kaiserlich Deutschen und der Venezolanischen Regierung wieder aufgenommen.

So geschehen in doppelter Ausfertigung in deutscher und englischer Sprache zu Washington am dreizehnten Februar Eintausend neunhundert und drei.

[L. s.]

H. STERNBURG.

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#### No. 3.

*Agreement between Germany and Venezuela for the reference of certain questions to the Permanent Court of Arbitration at The Hague.*

Whereas protocols have been signed between Germany, Great Britain, Italy, the United States of America, France, Spain, Belgium,

the Netherlands, Sweden and Norway, and Mexico on the one hand, and Venezuela on the other hand, containing certain conditions agreed upon for the settlement of claims against the Venezuelan Government:

And whereas certain further questions arising out of the action taken by the Governments of Germany, Great Britain, and Italy, in connection with the settlement of their claims, have not proved to be susceptible of settlement by ordinary diplomatic methods:

And whercas the powers interested are resolved to determine these questions by reference to arbitration in accordance with the provisions of the convention for the pacific settlement of international disputes, signed at The Hague on the 29th July, 1899.

Germany and Venezuela have, with a view to carry out that resolution, authorized their representatives, that is to say, the Imperial German minister, Baron Speck von Sternburg, as representative of the Imperial German Government, and Mr. Herbert W. Bowen, as plenipotentiary of the Government of Venezuela, to conclude the following agreement:

#### ARTICLE 1.

The question as to whether or not Germany, Great Britain, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside 30 per cent of the customs revenues of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal in that case shall consider in connection with the payment of the claims out of the 30 per cent any preference or pledges of revenue enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution so that no powers shall obtain preferential treatment, and its decision shall be final.

#### ARTICLE 2.

The facts on which shall depend the decision of the questions stated in article 1 shall be ascertained in such manner as the tribunal may determine.

#### ARTICLE 3.

The Emperor of Russia shall be invited to name and appoint from the members of the Permanent Court of the Hague three arbitrators

to constitute the tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement. None of the arbitrators so appointed shall be a subject or citizen of any of the signatory or creditor powers.

This tribunal shall meet on the 1st day of September, 1903, and shall render its decision within six months thereafter.

#### ARTICLE 4.

The proceedings shall be carried on in the English language, but arguments may, with the permission of the tribunal, be made in any other language also. Except as herein otherwise stipulated, the procedure shall be regulated by the convention of The Hague of July 29, 1899.

#### ARTICLE 5.

The tribunal shall, subject to the general provision laid down in article 57 of the international convention of July 29, 1899, also decide how, when, and by whom the cost of this arbitration shall be paid.

#### ARTICLE 6.

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this agreement.

Done in duplicate at Washington this 7th day of May, 1903.

[L. s.]

STERNBURG.

[L. s.]

HERBERT W. BOWEN.

*Extract from the memorandum communicated by the ambassador of the United States of America at Berlin, December 13, 1902.*

No. 4.] EMBASSY OF THE UNITED STATES OF AMERICA,  
December 13, 1902.

#### MEMORANDUM.

I am to have the honor of informing his excellency that the Government of Venezuela has asked the minister of the United States to convey to the Imperial Government of Germany and to Great Britain a proposal for an arbitration in regard to the method of settling the claims of German and British subjects for injuries suffered by them during the insurrection. I have instructions to communicate this proposal to his excellency the minister for foreign affairs, and to report his excellency's reply to the honorable Secretary of State. A telegram of this purport has also been sent to the American ambassador in London.

CHARLEMAGNE TOWER.

*Abschrift einer dem Botschafter der Vereinigten Staaten von Amerika in Berlin am 23. Dezember 1902 übergebenen Denkschrift.*

No. 5.]

AUSWÄRTIGES AMT.

DENKSCHRIFT.

Die Kaiserliche Regierung spricht der Regierung der Vereinigten Staaten von Amerika für die Bemühungen den unerwünschten Streit mit Venezuela in befriedigender Weise beizulegen, ihren verbindlichsten Dank aus. Der von den Vereinigten Staaten übermittelte Vorschlag wegen Einsetzung eines Schiedsgerichts erscheint Deutschland ebenso wie England als eine genügende Grundlage, um zu einer gerechten Erledigung ihrer Ansprüche zu gelangen. Dabei glauben die beiden Mächte indes gewisse Vorbehalte machen zu sollen:

1. Unter ihren Ansprüchen befinden sich Forderungen, die für eine schiedsrichterliche Behandlung nicht geeignet sind. Ansprüche dieser Art sind, soweit Deutschland in Betracht kommt, dessen Reklamationen aus den venezolanischen Bürgerkriegen von 1898 bis 1900, die sich des Näheren aus der anliegenden, dem Reichstage mitgeteilten Denkschrift<sup>a</sup> vom 8. Dezember ergeben. Danach handelt es sich bei diesen Reklamationen um Gewaltakte der Venezolanischen Regierung und ihrer Organe, für welche diese nach jahrelangen Verschleppungsversuchen eine ausreichende Sühnetrotz wiederholter Vorstellungen der Kaiserlichen Regierung in nahezu beleidigender Weise verweigert hat. Diese Forderungen, die sich nach sorgfältiger Prüfung durch die Kaiserliche Regierung auf rund 1,700,000 Bolivars (\$325,000) belaufen, werden daher von der Venezolanischen Regierung unverzüglich anzuerkennen sein; auch wird diese, sofern sie zur sofortigen Zahlung ausser Stande ist, wenigstens sichere Bürgschaft für die baldige Befriedigung zu stellen haben.

2. Alle weiteren Forderungen, die in den beiden Ultimaten aufgestellt sind, werden der einzusetzenden Schiedsinstanz unterbreitet werden können. Letztere wird sich daher nicht nur mit den Reklamationen aus dem gegenwärtigen venezolanischen Bürgerkriege, sondern auch, soweit Deutschland in Betracht kommt, mit den in der erwähnten Denkschrift aufgeführten Forderungen deutscher Unternehmer wegen Nichterfüllung der von der Venezolanischen Regierung vertragsmässig übernommenen Verbindlichkeiten zu befassen haben.

3. Die Schiedsinstanz wird sowohl über die materielle Berechtigung der einzelnen Forderungen zu entscheiden als auch die Art und Weise ihrer Befriedigung und Sicherstellung zu bestimmen haben.

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<sup>a</sup> Diese Denkschrift ist nicht beigelegt, da die deutschen Reklamationen aus den venezolanischen Bürgerkriegen von 1898 bis 1900 bereits ihre Erledigung gefunden haben.

Bei den Reklamationen wegen Beschädigung oder widerrechtlicher Wegnahme von Eigentum wird überdies von der Venezolanischen Regierung ihre Haftpflicht im Prinzip anzuerkennen sein, dergestalt, dass diese Haftpflicht nicht den Gegenstand des Schiedsspruchs bildet, sondern dass die Schiedsinstanz lediglich über die Widerrechtlichkeit der Beschädigung oder Wegnahme sowie über die Höhe der Entschädigung zu befinden hat.

Die Regierung der Vereinigten Staaten würde die Kaiserliche und die Britische Regierung besonders verpflichten, wenn es ihrem Einfluss auf die Venezolanische Regierung gelänge, sie zur Annahme dieser Vorschläge zu bewegen. Auch würden beide Regierungen es mit Dank erkennen, wenn der Präsident der Vereinigten Staaten geneigt sein würde, das Schiedsamt unter den angegebenen Voraussetzungen zu übernehmen. Sollte hierzu der Präsident der Vereinigten Staaten zum Bedauern der beiden Regierungen nicht geneigt sein, so sind diese auch bereit, die Angelegenheit dem Haager Schiedsgerichte zu unterbreiten.

BERLIN, den 22. Dezember 1902.

No. 6.]

EMBASSY OF THE UNITED STATES OF AMERICA,  
*January 1, 1903.*

EXCELLENCY: I have the honor to communicate to your excellency, under instructions from the Government of the United States, the following telegram from President Castro, which was transmitted by the United States minister in Venezuela to the honorable the Secretary of State in Washington:

I recognize in principle the claims which the allied powers have presented to Venezuela. They would already have been settled if it had not been that the civil war required all the attention and resources of the Government.

To-day the Government bows to superior force and desires to send Mr. Bowen to Washington at once to confer there with the representatives of the powers which have claims against Venezuela, in order to arrange either an immediate settlement of all the claims, or the preliminaries for a reference to the tribunal of the Hague or to an American republic to be selected by the allied powers and by the Government of Venezuela. Mr. Bowen would be duly authorized to settle the whole question as the representative of Venezuela.

CIPRIANO CASTRO.

I am instructed to say to your excellency that the suggestion made by the President of Venezuela, that an American republic should be selected as arbitrator, is not supported by the Government of the United States of America.

I am further instructed to inform your excellency that the designation of Mr. Bowen as the representative of Venezuela has not been made either at the suggestion or in accordance with the wishes of the Government of the United States.



If, therefore, the powers decline to accept Mr. Bowen in that capacity, the United States Government will communicate that decision to the Government of Venezuela, and will decline to authorize Mr. Bowen to act.

It is believed that he was suggested as a representative merely with a view to securing prompt and favorable action.

I avail myself of this opportunity to renew to your excellency the assurance of my most distinguished consideration.

CHARLEMAGNE TOWER.

His Excellency Baron von RICHTHOFEN,  
*Imperial Secretary of State for Foreign Affairs.*

*Abschrift einer dem Botschafter der Vereinigten Staaten von Amerika in Berlin am 6. Januar 1903 übergebenen Denkschrift.*

No. 7.]

AUSWÄRTIGES AMT.

DENKSCHRIFT.

Die Kaiserliche Regierung hat mit Genugtuung davon Kenntnis genommen, dass die Venezolanische Regierung die deutschen Forderungen im Prinzip anerkennt. Bevor indes auf dieser Grundlage in weitere Verhandlungen mit Venezuela eingetreten werden kann, erscheint es erforderlich, dass der Präsident Castro eine bestimmte Erklärung über die unbedingte Annahme der in der deutschen Denkschrift vom 22. Dezember 1902 aufgestellten drei Vorbehalte abgibt; dabei würde er sich insbesondere auch darüber zu äussern haben, in welcher Weise er die in dem Vorbehalt unter 1 bezeichneten Forderungen zu bezahlen oder sicherzustellen gedenkt.

Nach Eingang einer befriedigenden Erklärung der Venezolanischen Regierung würde die Kaiserliche Regierung bereit sein, ihren Botschafter in Washington anzuweisen, mit Mr. Bowen als Vertreter Venezuelas in Verhandlung zu treten und seine Vorschläge wegen Erledigung der Angelegenheit in Erwägung zu ziehen. Diese Vorschläge würden sich, abgesehen von den alsbald zu erfüllenden Forderungen indem Vorbehalt unter 1, entweder auf eine sofortige Regelung aller Ansprüche oder auf deren Ueberweisung an das Haager Schiedsgericht erstrecken können. Dabei setzt die Kaiserliche Regierung voraus, dass eine Erörterung etwaiger Vorschläge wegen der sofortigen Regelung keinesfalls ihrem Rechte auf Ueberweisung an das Haager Schiedsgericht präjudizieren darf.

Die Kaiserliche Regierung würde der Regierung der Vereinigten Staaten zu besonderem Danke verpflichtet sein, wenn diese die vorstehende Antwort dem Präsidenten Castro übermitteln würde.

BERLIN, den 5. Januar 1903.

No. 8.]

EMBASSY OF THE UNITED STATES OF AMERICA,  
*January 9, 1903.*

EXCELLENCY: Under instructions from the Government of the United States, I have the honor to communicate to your excellency the following telegram, which was transmitted by Mr. Bowen to the honorable the Secretary of State at Washington yesterday, the 8th of January:

MR. MINISTER: The Venezuelan Government accepts the conditions of Great Britain and Germany, and requests you to go immediately to Washington for the purpose of conferring there with the diplomatic representatives of Great Britain and Germany and with the diplomatic representatives of the other nations that have claims against Venezuela, and to arrange either an immediate settlement of said claims or the preliminaries for submitting them to arbitration.

CIPRIANO CASTRO,  
*Constitutional President.*

I am further instructed to communicate to your excellency a portion of Mr. Bowen's telegram addressed to the honorable the Secretary of State, which reads as follows:

[Confidential.]

If, as I understand, Great Britain and Germany want to know what guarantee they will have, please inform them that it will be the customs-houses; consequently I beg that the blockade be raised at once.

BOWEN.

I am also to inform your excellency that Mr. Bowen will come to Washington immediately.

I have the honor to avail myself of this opportunity to renew to your excellency the assurance of my highest consideration.

CHARLEMAGNE TOWER.

His Excellency Baron VON RICHTHOFEN,  
*Imperial Secretary of State for Foreign Affairs.*

No. 3.

[Uebersetzung.]

*Abkommen zwischen Deutschland und Venezuela über die schiedsrichterliche Entscheidung gewisser Fragen durch den ständigen Schiedshof im Haag.*

Nachdem zwischen Deutschland, Grossbritannien, Italien, den Vereinigten Staaten von Amerika, Frankreich, Spanien, Belgien, den Niederlanden, Schweden und Norwegen und Mexico einerseits und Venezuela andererseits Protokolle unterzeichnet worden sind, die gewisse Bedingungen für die Regelung von Reklamationen gegen die Venezolanische Regierung enthalten; nachdem ferner gewisse weitere

Fragen, die aus der von den Regierungen Deutschlands, Grossbritanniens und Italiens unternommenen Aktion in Ansehung der Regelung ihrer Reklamationen entstanden sind, für eine Erledigung auf dem gewöhnlichen diplomatischen Wege sich als ungeeignet erwiesen haben; nachdem endlich die beteiligten Mächte sich entschlossen haben, diese Fragen durch Schiedsspruch gemäss den Bestimmungen der am 29. Juli 1899 im Haag unterzeichneten Konvention zur friedlichen Erledigung von internationalen Streitfällen entscheiden zu lassen, haben Deutschland und Venezuela in der Absicht, diesen Entschluss auszuführen, ihre Vertreter, nämlich: den Kaiserlich Deutschen Gesandten Herrn Freiherrn Speck von Sternburg als Vertreter der Kaiserlich Deutschen Regierung und Herrn Herbert W. Bowen als Bevollmächtigten der Venezolanischen Regierung ermächtigt, das folgende Abkommen abzuschliessen:

#### ARTIKEL 1.

Die Frage, ob Deutschland, Grossbritannien und Italien auf eine bevorrechtigte oder gesonderte Behandlung bei der Bezahlung ihrer Reklamationen gegen Venezuela Anspruch haben, soll zur endgültigen Entscheidung dem Schiedsgericht im Haag unterbreitet werden.

Da Venezuela eingewilligt hat, 30 Procent der Zollenkünfte von La Guaira und Puerto Cabello für die Bezahlung der Reklamationen aller Nationen gegen Venezuela zur Verfügung zu stellen, so soll das Schiedsgericht im Haag entscheiden, wie die bezeichneten Einkünfte zwischen den Blockademächten einerseits und den übrigen Gläubigermächten andererseits zu verteilen sind, und seine Entscheidung soll endgültig sein.

Wird den Blockademächten eine bevorrechtigte oder gesonderte Behandlung nicht gewährt, so soll das Schiedsgericht entscheiden, wie die bezeichneten Einkünfte unter alle Gläubigermächte zu verteilen sind; die Vertragsteile sind darüber einig, dass das Schiedsgericht in diesem Falle neben der Bezahlung der Reklamationen aus den 30 Procent alle einer Gläubigermacht zu gute kommenden Vorrechte oder Pfandrechte an Einkünften in Betracht ziehen und demgemäss die Frage der Verteilung so entscheiden soll, dass keine Macht eine bevorrechtigte Behandlung erlangt; seine Entscheidung soll endgültig sein.

#### ARTIKEL 2.

Die Tatsachen, von denen die Entscheidung über die im Artikel 1 bezeichneten Fragen abhängt, sollen in der durch das Schiedsgericht zu bestimmenden Weise festgestellt werden.

#### ARTIKEL 3.

Der Kaiser von Russland soll gebeten werden, aus den Mitgliedern des ständigen Schiedshofs im Haag drei Schiedsrichter zu ernennen

und zu bezeichnen, um das Schiedsgericht zu bilden, welches die ihm auf Grund dieses Abkommens unterbreiteten Fragen entscheiden und regeln soll. Keiner der so ernannten Schiedsrichter darf Untertan oder Bürger einer der Signatar oder Gläubigermächte sein.

Das Schiedsgericht soll am 1. September 1903 zusammentreten und seine Entscheidung von da an binnen sechs Monaten abgeben.

#### ARTIKEL 4.

Die Verhandlungen sollen in englischer Sprache geführt werden; doch können mit Genehmigung des Schiedsgerichts Ausführungen auch in einer anderen Sprache gemacht werden. Das Verfahren wird, soweit nicht in diesem Abkommen ein anderes bestimmt ist, durch die Haager Konvention vom 29. Juli 1899 geregelt.

#### ARTIKEL 5.

Das Schiedsgericht soll unter Berücksichtigung der allgemeinen Bestimmung in Artikel 57 der internationalen Konvention vom 29. Juli 1899 auch darüber entscheiden, wie, wann und vom wem die Kosten dieses Schiedsverfahrens zu tragen sind.

#### ARTIKEL 6.

Jede Nation, die Reklamationen gegen Venezuela zu erheben hat, kann sich dem durch dieses Abkommen vorgesehenen Schiedsverfahren als Partei anschliessen.

So geschehen in doppelter Ausfertigung in Washington am sieben-ten Mai Eintausend neunhundert und drei.

STERNBURG.

HERBERT W. BOWEN.

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[Uebersetzung.]

*Auszug aus einem von dem Botschafter der Vereinigten Staaten von Amerika in Berlin am 13. Dezember 1902 übergebenen Memorandum.*

No. 4.] BOTSCHAFT DER VEREINIGTEN STAATEN VON AMERIKA,  
13. Dezember 1902.

DENKSCHRIFT.

pp.

Ich habe die Ehre, Seine Excellenz zu benachrichtigen, dass die Venezolanische Regierung den Gesandten der Vereinigten Staaten gebeten hat, der Kaiserlich Deutschen und der Grossbritannischen Regierung den Vorschlag zu unterbreiten, dass die Regelung der Reklamationen deutscher und britischer Untertanen wegen der ihnen während des

Auſtandes zugefügten Schäden auf dem Wege des Schiedsverfahrens erfolgen ſoll. Ich habe den Auftrag erhalten, dieſen Vorſchlag Seiner Excellenz dem Miniſter der auswärtigen Angelegenheiten zu übermitteln und die Antwort Seiner Excellenz dem Amerikanischen Staatsſekretär mitzuteilen. Der Amerikanische Botſchafter in London hat ein Telegramm gleichen Inhalts erhalten.

CHARLEMAGNE TOWER.

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*Translation of a memorandum handed to the ambassador of the United States of America on December 23, 1902.*

No. 5.]

FOREIGN OFFICE.

MEMORANDUM.

The Imperial Government wish to express to that of the United States their best thanks for the efforts of the latter to settle in a satisfactory manner the undesired controversy with Venezuela. The proposal made by the United States that an arbitrator should be appointed seems both to Germany and England to be a satisfactory basis for arriving at a fair settlement of their claims. But the two powers consider it necessary to make certain reservations:

1. Among their claims are some which in their present stage are not suited for submission to arbitration. Claims of this nature, so far as Germany is concerned, are those which originated in the Venezuelan civil wars from 1898 to 1900, and of which details are given in the inclosed memorandum of the 8th December, which was communicated to the Reichstag.\* It will be seen that they consist of claims on account of acts of violence on the part of the Venezuelan Government or their agents, and that after years of procrastination, and in spite of the repeated representations made by the Imperial Government, satisfactory compensation has been refused in a well-nigh insulting manner. This class of claims which, after careful examination by the Imperial Government, amount to a total of 1,700,000 bolivars (\$325,000), will therefore have to be admitted by the Venezuelan Government without delay; and the latter must, if they are unable to pay at once, give at least a safe guaranty for prompt payment.

2. All other claims which have been put forward in the two ultimata could be submitted to the arbitrator, and the latter will therefore have to deal not only with the claims arising out of the present civil war in Venezuela, but also, so far as Germany is concerned, with the claims of German subjects in connection with the nonfulfillment of the engagements alluded to in the above-mentioned

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\* This memorandum is not exhibited because the German claims arising out of the civil wars of 1898 to 1900 have already been satisfied.

memorandum, which the Venezuelan Government have undertaken under contracts made with those Germans.

3. The arbitrator will have to decide both about the intrinsic justification of each separate claim and about the manner in which they are to be satisfied and guaranteed. In the case of claims in connection with damage done to, or unjustifiable seizure of, property, the Venezuelan Government will have to recognize their liability in principle, so that the question of liability will not form the subject of arbitration, but the arbitrator will be concerned solely in the questions of the illegality of the damage or seizure, and also of the amount of compensation to be awarded.

The Government of the United States of America would be conferring an obligation on the Imperial and British Governments if, by exerting their influence over the Venezuelan Government, they could succeed in persuading the latter to accept these proposals. The two Governments would also be grateful if the President of the United States were disposed to undertake the office of arbitrator under the above conditions. Should the President of the United States not be inclined to do so, which would be to the regret of the two Governments, they are also prepared to submit the matter to the Arbitration Tribunal at The Hague.

BERLIN, *December 22, 1902.*

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[Uebersetzung.]

No. 6.] BOTSCHAFT DER VEREINIGTEN STAATEN VON AMERIKA,  
1. Januar 1903.

EXCELLENZ: Euerer Excellenz beehre ich mich im Auftrage der Regierung der Vereinigten Staaten das folgende Telegramm des Präsidenten Castro mitzuteilen, das durch den Gesandten der Vereinigten Staaten in Venezuela dem Herrn Staatssekretär in Washington übersandt worden ist:

Ich erkenne im Prinzip die von den verbündeten Mächten gegen Venezuela erhobenen Reklamationen als berechtigt an. Diese Reklamationen würden bereits erledigt sein, wenn nicht der Bürgerkrieg alle Aufmerksamkeit und Hilfsmittel der Regierung in Anspruch genommen hätte.

Gegenwärtig beugt sich die Regierung der höheren Gewalt und wünscht, unverzüglich Herrn Bowen nach Washington zu senden, um dort mit den Vertretern der Mächte, welche Reklamationen gegen Venezuela haben, zu verhandeln, dergestalt, dass entweder eine unverzügliche Regelung aller Reklamationen herbeigeführt oder Einleitung getroffen wird, um die Angelegenheit dem Haager Schiedsgericht oder einer von den verbündeten Mächten und der Venezolanischen Regierung ausgewählten amerikanischen Republik zu unterbreiten. Herr Bowen würde gehörig bevollmächtigt werden, um die ganze Angelegenheit Venezuelas zu regeln.

CIPRIANO CASTRO.



Ich bin beauftragt, Euerer Excellenz mitzuteilen, dass der Vorschlag des Präsidenten von Venezuela, eine amerikanische Republik als Schiedsrichter zu bestimmen, von der Regierung der Vereinigten Staaten von Amerika nicht unterstützt wird.

Ich bin ferner angewiesen, Euere Excellenz zu benachrichtigen, dass die Ernennung des Herrn Bowen als Vertreter von Venezuela weder auf Anregung noch in Ueberinstimmung mit den Wünschen der Regierung der Vereinigten Staaten erfolgt ist.

Wenn hiernach die Mächte es ablehnen, Herrn Bowen in dieser Eigenschaft anzunehmen, so wird die Regierung der Vereinigten Staaten diese Entschliessung der Venezolanischen Regierung mitteilen und Herrn Bowen die Erlaubnis zur Annahme dieser Vertretung versagen.

Wie es scheint, ist er lediglich deshalb als Vertreter vorgeschlagen worden, um ein schnelles und zweckentsprechendes Verfahren zu sichern.

Ich benutze diesen Anlass, um Euerer Excellenz die Versicherung meiner ausgezeichnetsten Hochachtung zu erneuern.

CHARLEMAGNE TOWER.

Seiner Excellenz dem Herrn Freiherrn von RICHTHOFEN,  
*Kaiserlichen Staatssekretär des Auswärtigen Amtes.*

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No. 7.]

*Translation of a memorandum handed to the ambassador of the United States of America on January 6, 1903.*

FOREIGN OFFICE.

MEMORANDUM.

The German Government has learned with satisfaction that the Venezuelan Government accepts, in principle, the German demands. Before entering into further negotiations with Venezuela on this basis, it appears necessary that President Castro should give a definite declaration that he accepts, unconditionally, the reservations contained in the German memorandum of the 22d December, 1902, besides which he must specially make clear in what manner he intends to pay the demands contained in that memorandum or to give security for the amount.

When the Venezuelan Government will have given a satisfactory declaration, the Imperial Government will be ready to instruct their ambassador at Washington to begin negotiations with Mr. Bowen, and to consider his proposals for the settlement of the matter. These proposals would, apart from the demands specified under (1) of the

memorandum, cover either an immediate regulation of all the claims or their reference to The Hague Tribunal. The German Government assumes that, if any proposals for immediate settlement are discussed, their rights as to referring the matter to The Hague Tribunal will in no way be prejudiced thereby.

The Imperial Government would be very grateful to the Government of the United States if the latter would transmit this reply to President Castro.

BERLIN, *January 5, 1903.*

[Uebersetzung.]

No. 8.] BOTSCHAFT DER VEREINIGTEN STAATEN VON AMERIKA.

*9. Januar 1903.*

EXCELLENZ: Euerer Excellenz beehre ich mich, im Auftrage der Regierung der Vereinigten Staaten das folgende Telegramm mitzutheilen, dass von Herrn Bowen dem Herrn Staatssekretär in Washington gestern, am 8. Januar, übersandt worden ist:

HERR MINISTER: Die Venezolanische Regierung nimmt die Bedingungen Grossbritanniens und Deutschlands an und ersucht Sie, Sich unverzüglich nach Washington zu begeben, um dort mit den diplomatischen Vertretern Grossbritanniens und Deutschlands sowie mit den diplomatischen Vertretern der übrigen Mächte, welche Reklamationen gegen Venezuela haben, zu verhandeln und entweder eine unmittelbare Regelung dieser Reklamationen herbeizuführen oder Einleitung wegen deren schiedsrichterlichen Erledigung zu treffen.

CIPRIANO CASTRO,

*Konstitutioneller Präsident.*

Ich bin ferner beauftragt, Euerer Excellenz folgenden Auszug aus einem an den Herrn Staatssekretär gerichteten Telegramme des Herrn Bowen mitzutheilen:

VERTRAULICH: Wenn, wie ich annehme, Grossbritannien und Deutschland zu erfahren wünschen, welche Sicherheit sie erhalten werden, so bitte ich, ihnen mitzutheilen, dass dies die Zolleinkünfte sein werden. Ich beantrage daher, dass die Blockade unverzüglich aufgehoben wird.

BOWEN.

Euere Excellenz habe ich endlich zu benachrichtigen, dass Herr Bowen alsbald nach Washington abreisen wird.

Ich habe die Ehre, diesen Anlass zu benutzen, um Euerer Excellenz die Versicherung meiner ausgezeichnetsten Hochachtung zu erneuern.

CHARLEMAGNE TOWER.

Seiner Excellenz dem Herrn Freiherrn von RICHTHOFEN,

*Kaiserlichen Staatssekretär des Auswärtigen Amtes.*

## THE CASE ON BEHALF OF ITALY.

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### STATEMENT OF FACTS.

I. The treaty of amity and commerce existing between Italy and the United States of Venezuela signed at Turin on June 19, 1861, assured to the Italians resident in the territory of the Republic the security for their persons and property.

But in times of riot and insurrection in Venezuela the Italians have suffered injuries in their persons and property.

II. Frequent representations had been made to the Venezuelan Government in order to obtain compensation for these injuries. The complaints of His Majesty's Government remained unheeded.

III. In 1872 the Governments of Great Britain, of Germany, Italy, France, Denmark, Spain, the Netherlands, and the United States of America joined in collective action to obtain security for their claims. A law was passed in Venezuela in that year providing for the setting aside of a portion of the customs receipts for the discharge of these claims. The foreign claims secured in the way are known as this diplomatic debt.

IV. The later riots, insurrections, and civil wars produced fresh injuries to a considerable number of Italian subjects.

His Majesty's Government made formal representations demanding redress; but with no better result than before. The Venezuelan Government did not admit their liability in cases where the claims were for injuries to persons and property and for wrongful seizure of the latter, alleging that the Articles IV and XXVI of the treaty above mentioned precluded all diplomatic action.

V. The Italian minister at Caracas received instructions to examine the claims presented by Italian citizens. Of these claims he found 123 to be valid, amounting in the aggregate to Bolivares 2,810,255.95, and declared that he would examine and present subsequent claims which might be presented by Italian subjects for personal injuries and damage to property occasioned by the civil war, which began in 1901, and for any other cause of action or complaint.

The minister required the Government of the Republic to accept the award of a mixed commission.

VI. On 13th December, 1902, diplomatic relations between the Venezuelan Government and the Governments of Great Britain, Germany, and Italy were broken off.

A blockade was declared by the three powers on the 20th December, 1902, against the ships of all nations.

VII. The ambassador of the United States in Rome, the Hon. George von Lengerke Mayer, received through the Secretary of State at Washington from the United States minister at that capital, on the 1st January the following communication for transmission to the Italian minister of foreign affairs:

I recognize in principle the claims which the allied powers have presented to Venezuela. They would already have been settled if it had not been that the civil war required all the attention and resources of the Government. To-day the Government bows to superior forces, and desires to send Mr. Bowen to Washington at once to confer with the representatives of the powers that have claims against Venezuela in order to arrange either an immediate settlement of all the claims or the preliminaries for reference to the tribunal of The Hague, or to an American Republic to be selected by the allied powers and by the Government of Venezuela. Mr. Bowen would be duly authorized to settle the whole question as the representative of Venezuela.

CIPRIANO CASTRO.

VIII. The Italian Government accepted the proposal for the amicable settlement of the controversy.

On the 13th of February a protocol was signed by Mr. Herbert W. Bowen duly authorized by the Government of Venezuela and His Excellency Nobile Edmondo Mayor des Planches, ambassador extraordinary and plenipotentiary of His Majesty the King of Italy to the United States of America, which protocol was as follows:

#### ARTICLE I.

The Venezuelan Government declare that they recognize in principle the justice of the claims which have been preferred by His Majesty's Government on behalf of Italian subjects.

#### ARTICLE II.

The Venezuelan Government agree to pay to the Italian Government, as a satisfaction of the point of honor, the sum of £5,500 in cash or its equivalent, which sum is to be paid within sixty days.

#### ARTICLE III.

The Venezuelan Government recognize, accept, and will pay the amount of the Italian claims of the first rank derived from the revolutions 1898-1900, in the sum of 2,810,255 Bolivaries.

It is expressly agreed that the payment of the above Italian claims of the first rank will be made without being the same claims or the same sum submitted to the mixed commission and without any revision or objection.

#### ARTICLE IV.

The Italian and Venezuelan Governments agree that all the remaining Italian claims, without exception, other than those dealt with in Article VII thereof, shall, unless otherwise satisfied, be referred to a mixed commission to be constituted as soon as possible in the manner defined in Article VI of the protocol, and which shall examine the claims and decide upon the amount to be awarded in satisfaction of each.

The Venezuelan Government admit their liability in cases where the claim is for injury to persons and property and for wrongful seizure of the latter, and consequently the questions which the mixed commission will have to decide in such cases will only be:

(a) Whether the injury took place or whether the seizure was wrongful; and,

(b) If so, what amount of compensation is due.

In other cases the claims will be referred to the mixed commission without reservation.

#### ARTICLE V.

The Venezuelan Government being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in Articles III and IV, and similar claims preferred by other Governments, undertake and oblige themselves to assign to the Italian Government, commencing the first day of March, 1903, for this purpose, and to alienate to no other purpose 30 per cent of the custom revenues of La Guaira and Puerto Cabello. In the case of failure to carry out this undertaking and obligation, Belgian officials shall be placed in charge of the two ports, and shall administer them until the liabilities of the Venezuelan Government, in respect of the above-mentioned claims, shall have been discharged.

Any question as to the distribution of the custom revenues so to be assigned, and as to the rights of Italy, Great Britain, and Germany to a separate settlement of their claims, shall be determined, in default of arrangement, by the tribunal at The Hague, to which any other power interested may appeal.

Pending the decision of The Hague tribunal, the said 30 per cent of the receipts of the customs of the ports of La Guaira and Puerto Cabello are to be paid over to the representatives of the Bank of England at Caracas.

## ARTICLE VI.

The mixed commission shall consist of one Italian member and one Venezuelan member.

In each case, where they come to an agreement, their decision shall be final. In case of disagreement, the claims shall be referred to the decision of an umpire nominated by the President of the United States of America.

## ARTICLE VII.

The Venezuelan Government further undertake to enter into a fresh arrangement respecting the external debt of Venezuela with a view to the satisfaction of the claims of the bondholders. This arrangement shall include a definition of the sources from which the necessary payments are to be provided.

## ARTICLE VIII.

The treaty of amity, commerce and navigation between Italy and Venezuela of June 19, 1861, is renewed and confirmed. It is, however, expressly agreed between the two Governments that the interpretation to be given to the articles 4 and 26 is the following:

“According to the article 4 Italians in Venezuela and Venezuelans in Italy can not in any case receive a treatment less favorable than the natives, and according to article 26 Italians in Venezuela and Venezuelans in Italy are entitled to receive in every matter and especially in the matter of claims the treatment of the most favored nation, as it is established in the same article 26.

“If there is doubt or conflict between the two articles, the article 26 will be followed.

“It is further specifically agreed that the above treaty shall never be invoked in any case against the provisions of the present protocol.”

## ARTICLE IX

At once upon the signing of this protocol arrangements shall be made by His Majesty's Government, in concert with the Governments of Germany and Great Britain, to raise the blockade of the Venezuelan ports.

His Majesty's Government will be prepared to restore the vessels of the Venezuelan Navy which may have been seized, and further to release any other vessel captured under the Venezuelan flag during the blockade.

The Government of Venezuela hereby obligate themselves and guarantee that the Italian Government shall be wholly exempted and relieved from any reclamations or claims of any kind which may be made by citizens or corporations of Venezuela, or by citizens or cor-



porations of any other nation, for detention, or seizure, or destruction of any vessel, or of goods on board of them, which may have been or which may be detained, seized, or destroyed by reason of the blockade instituted and carried on by the three allied powers against the Republic of Venezuela.

#### ARTICLE X.

The treaty of amity, commerce, and navigation of June 19, 1861, having been renewed and confirmed in accordance with the terms of Article VIII of this protocol, His Majesty's Government declare that they will be happy to reestablish regular diplomatic relations with the Government of Venezuela.

WASHINGTON, D. C., *13th February, 1903.*

[L. S.]

E. MAYOR DES PLANCHES.

[L. S.]

HERBERT W. BOWEN.

We interpret our three protocols to mean that the 30 per cent, referred to therein, of the total income of the custom-houses of La Guaira and Puerto Cabello shall be delivered to the representative of the Bank of England at Caracas, and that the said 30 per cent is not assigned to any one power but it is to be retained by the said representative of the Bank of England in Caracas and paid out by him in conformity with the decision rendered by the tribunal at The Hague.

WASHINGTON, *February 14, 1903.*

It was not found possible to settle the questions referred to in the Article V of the protocol of the 13th February, 1903. A further agreement was accordingly signed on the 7th of May, 1903. The full text of this agreement is as follows:

Whereas protocols have been signed between Italy, Great Britain, Germany, United States of America, France, Spain, Belgium, the Netherlands, Sweden and Norway, and Mexico, on the one hand, and Venezuela on the other hand, containing certain conditions agreed upon for the settlement of claims against the Venezuelan Government;

And whereas certain further questions arising out of the action taken by the Governments of Italy, Germany, and Great Britain, in connection with the settlement of their claims, have not proved to be susceptible of settlement by ordinary diplomatic methods;

And whereas the powers interested are resolved to determine these questions by reference to arbitration, in accordance with the provision for the pacific settlement of international disputes signed at The Hague on the 29th July, 1899;

The Government of Italy and Venezuela have, with a view to carry out that resolution, authorized their representatives; that is to say:

For Italy, His Excellency Nobile Edmondo Mayor des Planches, His

Majesty the King of Italy's ambassador extraordinary and plenipotentiary to the United States of America; for Venezuela, Mr. Herbert W. Bowen, duly authorized thereto by the Government of Venezuela, to conclude the following agreement:

#### ARTICLE I.

The question as to whether or not Italy, Germany, and Great Britain are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal of The Hague.

Venezuela having agreed to set aside 30 per cent of the custom revenues of La Guaira and Puerto Cabello for the payments of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal in that case shall consider, in connection with the payment of the claims, out of 30 per cent any preference or pledges of revenue enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution so that no power shall obtain preferential treatment, and its decision shall be final.

#### ARTICLE II.

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the tribunal may determine.

#### ARTICLE III.

The Emperor of Russia shall be invited to name and appoint from the members of the Permanent Court of The Hague three arbitrators to constitute the tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement. None of the arbitrators so appointed shall be a citizen or a subject of any of the signatory or creditor powers.

This tribunal shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

#### ARTICLE IV.

The proceedings shall be carried on in the English language, but arguments may, with the permission of the tribunal, be made in any other language also.

Except as herein otherwise stipulated, the procedure shall be regulated by the convention of The Hague of July 29, 1899.

#### ARTICLE V.

The tribunal shall, subject to the general provision laid down in article 57 of the international convention of July 29, 1899, also decide how, when, and by whom the costs of arbitration shall be paid.

#### ARTICLE VI.

Any nation having claims against Venezuela may join as a party in the arbitration provided for by this agreement.

IX. In order to carry out the provisions contained in articles 4, 5, and others of the Italian-Venezuelan protocol of February 13, 1903, the Royal Italian ambassador and Mr. Herbert W. Bowen as representative of the Government of Venezuela signed an agreement with reference to the mixed commission appointed to decide upon the Italian claims not yet accepted. The text of this protocol is annexed.

X. It is essential to note that the Italian Government have no information whether the protocols between Venezuela and the other creditor powers referred to in the preamble of the agreements of the 7th of May have received the sanction or ratification necessary to make them binding on the several signatory powers under their respective constitutions.

His Majesty's Government are aware that the Government of the Netherlands were authorized by special legislation to join as a party in the arbitration, but they have no information as to the other creditor powers. In these circumstances His Majesty's Government desire to place on record that they reserve all their rights as to this point.

It is known that the French Government did not unreservedly accept the protocol. They made their acceptance subject to an objection to Article IV, which provides that proceedings shall be carried on in the English language, but that arguments may, with the permission of the tribunal, be made in any other language also.

XI. The plenipotentiary of the United States of Venezuela, after the conclusion of the protocols, addressed to the ambassadors of the allied Governments the following letter:

DEAR SIR: Our negotiations ended, I thank you for having done all in your power to conclude them expeditiously and fairly.

The work we have done will tend without doubt to promote peace and good will not only among the Governments and peoples we have represented, but also among all mankind.

With kindest and friendliest regards to each one of you, I am,

Yours, very truly,

HERBERT W. BOWEN.

**II. The Italian Government does not intend to criticise the actions of the United States of Venezuela.**

It must, however, be remembered that President Castro expressed in his message to Congress in February, 1902, that Venezuela only needs peace to reestablish the equilibrium of his treasury and to meet its demands on its credits, and that equilibrium will be reached without any pressure on the part of Venezuela's creditors.

The customs revenues of La Guaira and Puerto Cabello were stated at the time of the negotiations to have been 18 millions of bolivars per annum.

The 30 per cent of the customs receipts at the two ports would therefore amount to some 5 millions. The customs of the three other principal ports of Maracaibo, Carupano, and Ciudad Bolivar are not assigned to the payment of the foreign claims. By decree of February 19 the customs duties were increased by 30 per cent.

**XIII. It will be remembered that the claims of Italian citizens are divided into three classes.**

The first class consists of the sum of 2,810,255.95 bolivars, recognized by Article III of the protocol of the 13th of February.

The second class consists of the claims submitted to the decision of the mixed commission. The Italian commissioner was named on the 17th of May.

The commissioners are bound to decide upon each claim within six months from the day of its presentation.

The third class consists of the claims of the bondholders. These claims are, however, not included in those now under consideration.

The Venezuelan Government has given a separate undertaking in regard to them, as will be seen on referring to Article VII of the Italian protocol.

**XIV. The Venezuelan Government has paid the sum of £5,500 to the Italian Government as satisfaction of the point of honor, under Article II.**

The mixed commission has since been constituted.

The President of the United States of America named the umpire for the claims, in case of disagreement.

**XV. The Italian Government immediately after the reception of the protocols signed at Washington on the 7th and 11th of May instructed their ambassadors in Berlin, London, and St. Petersburg to invite His Majesty the Emperor of Russia to appoint three arbitrators in accordance with the provision of Article III of the above-mentioned protocol. The British Government thought it necessary to wait until it was known which Governments among those which were entitled to do so had joined as parties in the arbitration.**

On the 4th of June the Governments of Spain, Belgium, and the Netherlands had not yet given instructions to their representatives to

that effect. The minister of Switzerland on that day received the claims of his citizens and was instructed by the Federal Government to adhere to the protocols. The Belgian minister at Rome notified the adhesion of his Government on the 16th of June.

The French Government made their reservations with respect to Article IV, which provides that the proceedings shall be carried on in the English language.

XVI. His Majesty the Emperor of Russia has named three arbitrators. But Mr. Lardy, Swiss minister in Paris, and Professor Matzen have declined the nomination in consequence of the condition stipulated in Article III of the protocol that "None of the arbitrators shall be a subject or citizen of any of the signatory or creditor powers."

XVII. In compliance with Article III the tribunal met on the 1st day of September.

The honorable secretary-general of the International Bureau of the permanent Court of Arbitration informed the parties that the opening of the tribunal was fixed for 3 o'clock.

XVIII. The fact that there was only one or two arbitrators then appointed made it necessary to adjourn the sitting.

Article IV of the protocol of the 7th of May provides:

Except as herein otherwise stipulated, the procedure shall be regulated by the convention of The Hague of the 29th of July, 1899.

Article XXXV of the above convention runs as follows:

En cas de décès, de démission ou d'empêchement pour quelque cause que ce soit de l'un des arbitres il est pourvu à son remplacement selon le mode fixé pour sa nomination.

XIX. The parties to this arbitration are classified in three categories.

*First category.*—Italy, Germany, and Great Britain, the powers which declared and established the blockade and obtained the special security from Venezuela by their belligerent action.

*Second category.*—The other creditor powers which did no take part in the controversy between the blockading powers and Venezuela, viz, United States of America, France, Spain, Belgium, the Netherlands, Sweden and Norway, and Mexico.

It is necessary to note that France accepted the protocol of the 7th of May only after some delay.

*Third category.*—Switzerland, which has since joined as a party in the case.

XX. His Majesty's Government have not thought it necessary to append to this case the documents in which are recorded the negotiations between them and the Venezuelan Government.

The negotiations between Venezuela and the blockading powers, shown in detail in the documents appended to the British case and those negotiations were common to each of the blockading powers.

## ARGUMENT.

### I. RESERVATIONS.

It is believed by His Majesty's Government that the other creditor powers, or some of them, have obtained from Venezuela specific securities for their claims. It is necessary to know the details of those securities. But they do not at present know on what grounds the claims of the other creditor powers to share in the proceeds of the security of the customs of La Guaira and Puerto Cabello are based. These grounds must be disclosed in the cases which are to be presented by those other creditor powers.

His Majesty's Government therefore reserves to itself further discussion on the argument as well as on the existence and validity of the protocols of the other creditor powers.

### II. LEGAL ASPECT OF THE BLOCKADE AS A MEANS OF ENFORCING DEMANDS.

Default in payment of debts by a State is by no means new, but has become much more frequent in modern times owing to the recklessness and imprudence with which governments have recourse to the public credit, and this is more especially the case in those states in which civil wars are of frequent occurrence. Blockade has been frequently used as a means of enforcing demands without resorting to war. The first instance occurred in 1827, against the coasts of Greece, blockaded by the English, French, and Russian squadrons.

Some governments used their rights to proceed against other governments to compel the latter to pay their debts to the citizens of the former. On this point it is not necessary to remind the court of the action of France, Great Britain, and Spain against the Republic of Mexico,<sup>a</sup> and the action against the Republics of the Equator—Costa Rica, and Guatemala.

The form of action taken in these cases has varied greatly.<sup>b</sup>

### III. THE STATES NOT TO BE CONSIDERED AS BANKRUPT.

It is not possible to treat States as if they were individuals or societies carrying on trade. States are subject to international law. The fundamental right of States is independent sovereignty. Con-

<sup>a</sup> Beach-Lawrence, Vol. I, p. 539.

<sup>b</sup> Hall, International Law, Measures of restraint short of war, p. 386.



sequently, a State exercises jurisdiction not only over the members of its own community and their property, but also over foreigners in its territory and their property. The property of individuals is subject to the rules of municipal law. The municipal laws of each country vary greatly. In Italy, Belgium, in the Netherlands, in France, and in Portugal the municipal law limits the application of the law of bankruptcy to individuals and societies engaged in trade. The law of Switzerland provides for the bankruptcy only of debtors whose names are entered in the register of commerce.

On the other hand, at present, many systems of law have extended the procedure of bankruptcy to non traders. Germany, Austria, and Great Britain have legislation of this kind. Moreover it is not possible to specify when a person is in a state of bankruptcy.

On these points Cardinal Deluca in Disc., 10, page 13, *de creditis et debitis* writes as follows:

*Quando quis dicatur decoctus te quale sit tempus decoctioni proximus, in jure statutum non rēpēritur. Veritas est ut ista sit quæstio facti potius quam juris, non admittens certam ac determinatam regulam.*

And Casaregis writes as follows:

*Ad probandam decoctionem certa regula non est in jure determinata, neque ad probandum quando quis sit proximus decoctionis.\**

It is essential to bear in mind that the debts for which States are liable to foreign citizens or societies frequently arise from acts done in the exercise of their sovereign power.

What procedure is to be applied in such cases? What tribunal is to have jurisdiction to decide on them? Which law is to prevail in the decision?

The property of a State is not subject to proceedings of the nature of sequestration or seizure. Any such process would be inconsistent with the continued existence of the State as an independent community. It is obvious therefore that it is impossible to apply to States the procedure of bankruptcy as it is applied to individuals or societies.

Moreover, the fact that a State is for the moment unable to discharge its debts in full does not necessarily mean that it is insolvent. History affords many instances in which States have recovered their position on the restoration of internal order or by the better administration of their finances, even, if necessary, under foreign control, or by an increase of revenues from taxation.

#### IV. DEFINITION OF THE RESPONSIBILITY OF VENEZUELA.

But in the present case it is not possible to maintain that the Government of Venezuela is in the condition of bankruptcy.

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\* *Discursus legales de commercio.*

They refused to recognize their responsibility for damages caused by acts of violence to property and persons. The principle of responsibility for such acts was recognized in 1872 after the collective action of the Governments of Italy, Germany, Great Britain, Denmark, France, the Netherlands, and the United States to obtain security for their claims.

The holders of bonds of the external debt had for some years received no payment on account of them. It is indisputably proved that the Government of Venezuela patently violated international law in matter of serious importance.

They refused the proposal for a mixed commission. The President of the Republic attempted to refer the whole matter to a special tribunal, constituted exclusively by Venezuela.

At a later date he asserted that foreign governments were not entitled to take diplomatic action to enforce compensation for damages and injuries such as those above referred to.

An ultimatum was therefore delivered by His Majesty's Government, but the demands made in it were rejected by Venezuela. The Venezuelan Government thus provoked the blockade. The other creditor powers remained neutral and thus recognized the right and the legality of this act of force. The blockade was maintained by a sufficient naval force and was an effective blockade according to the conditions specified in the declaration of Paris. If these conditions had not been observed then the neutral powers would have had the right to consider the blockade ineffective. But in fact they were observed.

This measure of war, therefore, consisting in the prevention of access to the territory of the enemy, in the occupation of the territorial waters, in the interruption of the general native commerce, in the exercise of the right of capture of vessels sailing to the blockaded coasts constituted a taking possession by the blockading powers of security for redress of their grievances.

The capture of the vessels of Venezuela constituted a further security.

The temporary occupation of territorial waters does not amount to conquest, but is a means of obtaining other securities on the conclusion of a treaty of peace.

The Italian Government decline to enter into any discussion on the legitimacy of the blockade. The matter is excluded by the agreement. Two questions are submitted to the tribunal. The second depends upon the decision of the first:

I. Are Italy, Germany, and Great Britain entitled to preferential or separate treatment in the payment of their claims against Venezuela?

II. If the tribunal decides that the preferential or separate treat-

ment is not to be given to the blockading powers, the tribunal shall decide how the 30 per cent of the customs revenues of La Guaira and Puerto Cabello shall be distributed among all the creditor powers. The tribunal will not fail to bear in mind the well-known maxim "Diligenter fines mandati custodiendi sunt, nam qui excessit, aliud quid facere videtur." (ff, 5. §§ Dig., I. De negotiis.)

#### V. NATURE OF THE INTERNATIONAL CONTRACTS OF THE 13TH OF FEBRUARY AND THE 7TH OF MAY.

The effect of an international contract is primarily to bind the parties to it by its provisions either for such time as is fixed, if it be made for a definite period, or until its objects are satisfied, or indefinitely if its object is to secure the performance of acts extending on an indefinite period.

The continuance of these obligations is dependent upon the customs revenues of La Guaira and Puerto Cabello. When this payment of the debts shall have been made, then these contracts will come to an end.

A convention for a guaranty is one of the most usual international contracts,<sup>a</sup> but it is most commonly applied to treaties of peace.<sup>b</sup> Formerly, occupation of territory was often used as a means of securing the payment of debts for which the territory occupied was hypothecated.

The guaranty constitutes a real security.

In recent times states have often used, as a mode of taking security for the payment of debts within a reasonable time, an assignment of certain revenues on the condition that they should not be alienated for any other purpose.<sup>c</sup>

Such security is a pledge or hypotheca.<sup>d</sup> The principles by which this matter should be governed in international law should be laid down in the legal system exhibited by the "jus," "lex," and the opinions of the Roman jurisconsults. Rome has given a body of laws to all nations called the law of nature. Leibnitz named it the *ratio scripta*. As independent communities acknowledge no common superior, the disputes arising among these independent communities must be determined by the law of nature. By the general consent of nations the rules of Roman law were adopted, especially in the matter of contracts.<sup>e</sup>

The pledge or hypotheca can be constituted by a "pactum" without "traditio." *Res hypothecæ dari posse sciendum est pro quacunque obligatione, \* \* \* sive pura est obligatio, vel in diem vel sub conditione et sive in præsentì contractu.*<sup>f</sup>

At the beginning, there was no difference between *pignus* and *hypotheca*. In. st. 3 §§ 1. de pign. 201: *Inter pignus autem et*

*hypothecam tantum nominis sonus differt. it.* But later on the *pignus* is confined to movable property of which possession was given.

*Inter pignus autem et hypothecam differentia est, nam pignoris appellatione eam rem contineri dicimus quæ simul etiam traditur creditori, maxime si mobilis est; at eam quæ sine traditione, nuda conventionione tenetur, propriæ hypothecæ appellatione contineri dicimus.* (Marcianus.)

Now, one can not give as security property which has already been alienated.

Cum res quæ necdum in bonis debitoris est, pignori data ab eo postea in bonis ejus esse incipiat, ordinariam quidem actionem super pignore non competere manifestum est. C. 5: si aliena res pignori lata sit.

\* Wheaton, Rights of negotiation and treaty, p. 387.

• Vattel, Droit des gens, tit. II, ch. 16, §§ 235–239. Klüber, Droit des gens moderne de l'Europe, pt. II, tit. 2, sut. 1, ch. 2, §§ 157, 158. Martens, Précis, et., § 63.

• Alphonse Rivier dans le livre Principes du droit des gens, écrit au § 52, No. 151, des moyens d'assurer, l'exécution des traités en général: "De nos jours certains revenus d'un Etat sont affectés, à la sûreté du remboursement d'un emprunt ou du paiement des coupons, en faveur des créanciers de cet Etat. Ces créanciers sont des particuliers, mais l'affectation est soumise au contrôle des Etats."

• Pradier Fodéré écrit, T. II, 1169: "Les garanties financières consistent dans l'affectation de telle ou telle source des revenus de l'Etat à la garantie d'une dette, ou bien dans le dépôt des titres, ou des valeurs représentant la somme due \* \* \*."

• Rivier: "Il est incontestable que les principes du droit privé et plus spécialement du droit romain, droit commun des nations européens, sont applicables aux droit des gens par analogie." Grotius, II, p. 16, § 31.

† Marcianus, Libro singulari ad formulam hypothecariam. Dig. sive Pandec., Liber vigesimus, §§ 1, 5.

The terms of the protocol of February 13, established undoubtedly the cession of the 30 per cent for the payment of 2,810,255,255 bolívares. This debt is not submitted to revision or objection. (Art. V.) The unascertained debts are at this moment being determined by the mixed commission. The pledge or security for their payment consists in the assignment for this purpose of the 30 per cent of the customs revenues of La Guaira and Puerto Cabello. The condition prohibiting its alienation to any other purpose deprived Venezuela of the property in it and transferred it to the Italian Government and their allies. The obligation to deposit the said 30 per cent with the Bank of England at Caracas precludes the supposition that the Venezuelan Government intended to give the said sum to any other creditor power.

This security is given to the three blockading States severally, but they stipulated that the pledge should be accepted collectively.

## VI. RIGHTS TO PREFERENTIAL PAYMENT FOUNDED UPON THE DATE OF THE AGREEMENTS.

When two treaties which are made with different states at different times conflict, the earlier governs, it being evidently impossible to derogate from an engagement made with a particular person by a subsequent agreement.<sup>a</sup> In fact the protocols between the Republic of Venezuela and the other Governments were concluded after the action taken by the allied Governments and the agreements made by Venezuela with them. The dates of signature of the protocols of the other creditor powers, though not officially known, are stated to be as follows:

(1) United States, February 17; (2) Mexico, February 23; (3) France, February 27; (4) The Netherlands, February 28; (5) Belgium, March 7; (6) Sweden and Norway, March 10; (7) Spain, April 2.

In the opinion of His Majesty's Government the court, if it admit the right of preferential payment founded upon the priority of time, is relieved from the necessity of examining the other arguments.

## VII. THE RIGHT OF PREFERENTIAL TREATMENT FOUNDED ON THE RULE: PRIOR IN TEMPORE POTIOR IN JURE.

The three allied powers by the ultimatum and the blockade compelled Venezuela to recognize the debts and to confer on Mr. Bowen full authority to arrange an immediate settlement of all the claims. The other powers took no part in that action.

The security was obtained by the efforts of the blockading powers alone. The Roman law recognizes a privilege on behalf of the creditor who first obtained possession of goods.

Ulpianus, *Libro tertio disputationum*, expressed a principle of natural justice in the following passage (*Imper. Diocletianus et Maximinianus, Aa. et Cc. Fabricio*):

*Diversis temporibus eadem res duobus jure pignoris obligata eum qui prior data mutua pecunia pignus accepit, potiolem haberi certi ac manifesti juris est, nec alias secundum distrahendi potestatem hujus pignoris consequi, nisi superiori creditori debita fuerit soluta quantitas. (Inst. Justin. XVII, qui potiores in pignore habeantur, ff. 8. de AA. et CC.) Asclepodoto: Eos qui acceperunt pignora cum in rem habeant actionem, privilegiis omnibus, quæ personalibus actionibus competunt, præferri constitit. (Ibidem, ff. 9.)*

Marclanus, *libro singulari ad formulam hypothecariam*: Creditor qui prior hypothecam accepit sive possideat eam, et alius vindicet hypothecaria actione, exceptio priori utilis est. (*Inst. Liber Vigessimus IIII.*) Qui potiores in pignore vel hypotheca habeantur: 12.

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<sup>a</sup> Grotius, *liv. II, cap. XVI, § 29*; Vattel, *liv. II, ch. XVII, § 312-322*; Phillimore, *II, ch. IX*; Caho, *§ 720-723*; Bluntschli, *§ 414*; Hall, *International law, Treaties, Pt. II, Chap. X, § 112*.

The three allied powers can invoke the rule, *melior est conditio possidentis*. Voet, in the commentaries ad Pandectas, Lib. XX, tit. IV, *qui potiores in pignore*, etc.

*Sed et in pignore judiciali temporis prærogativa servatur ut potior sit in cujus gratiam post rem judicatam pignus in causa judicati, ex auctoritate ejus qui jubere potuit, juris captum est. Cod de bonis quæ liberi, etc.*

#### VII. RIGHTS OF PRIORITY FOUNDED ON THE EXPENSES INCURRED.

According to the law of nature or *jus gentium* even a later creditor is preferred to an earlier creditor if the advance made by the former is made for the purpose of securing the safety of the subject of the earlier charge.

At the time of the signing of the protocols the blockading powers held actual security in the shape of the Venezuelan navy. Article IX of the protocol states as follows:

At once upon the signing of this protocol arrangements shall be made by His Majesty's Government in concert with the Governments of Germany and Great Britain to raise the blockade of the Venezuelan ports.

Thus the security of the 30 per cent of the customs revenue of La Guaira and Puerto Cabello was assigned before the blockade was raised. It would therefore be absolutely unjust that the other powers which did not incur any expenses in getting this security, should be permitted to share in competition with those to whose exertion its very existence was due.

Ulpianus, Lib. tertio disputationum: "Interdum posterior potior est priori ut puta si in rem istam conservandam impensum est." (Inst. Lib., XX, §§ IV, ff. 5.)

This right of priority in respect of expense in procuring execution is accepted in all the modern codes.\*

With analogy to municipal law the diplomatic and military action is to be considered as a method of international procedure.

#### IX. RIGHT OF PRIORITY FOUNDED ON OTHER REASON.

The purpose of the blockading powers was avowedly to obtain satisfaction for their own claims alone. No one of the other creditor powers asked to participate in the belligerent operations undertaken against Venezuela, nor did they protest against the action taken by the belligerent powers to enforce their claims. It was only after the conclusion of the military operations that the neutrals demanded to share in the fruits of these operations.

Such a claim finds no precedent in the history of nations. Another fact is also unprecedented. A State which had continually asserted

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\* C. Nap., art. 1956, 1959, 1961.



that the Tribunals of Venezuela were alone competent to adjudicate on the claims of creditors and had declined to recognize the claims presented by the three powers was obliged to yield to superior force and to admit responsibility for them. The other creditor powers now demand immediate settlement of their claims and a share in the same guarantee that the plenipotentiary of Venezuela has given for the Italian, British, and German claims, although they did not put pressure on Venezuela to procure the admission of their claims. Finally another special fact is noticeable, that Mr. Bowen, being authorized by the Department of State of Washington to act as the temporary representative of Venezuela with full powers in the difficulty that had arisen respecting the manner of settling the claims of Italy, Great Britain, and Germany, accepted full powers on January 7 from the Venezuelan Government after they had already accepted the conditions of the allied powers. Did Mr. Bowen receive the permission of his Government to arrange the claims of the other nations? It is necessary that proof should be given of this, as it seems that in the agreement with the Secretary of State of the United States of America this permission is wanting. It is also necessary to remember that Mr. Bowen was the diplomatic representative of the United States at Caracas, and that he is an American citizen.

It is further to be observed that the Venezuelan Government, by the decree of the 19th February, increased the income of the custom-houses by 30 per cent. Therefore the balance of the customs revenues at the disposal of the Venezuelan Government has not been reduced by the assignment to the blockading powers. The amount remains the same as it was before that assignment. If the matter be treated as one of equity and common fairness, the right to preferential on separate treatment should be accepted by the court. It is essential to keep in mind the financial condition of Venezuela and the obligation of the Venezuelan Government not to alienate for any other purpose the 30 per cent of the customs revenues in question.

Finally the attention of the arbitrators is respectfully called to the fact that the Italian Government have already received a sum of £5,500. (Art. II of the protocols.) Mr. Bowen recognized the right to the payment of the sum of 2,810,255.95 bolivars. It was therefore unjust and unfair to refuse a privileged payment for the whole amount of the claims.

#### X. ADHESION TO ARGUMENTS SET FORTH IN THE BRITISH AND GERMAN CASES.

The claim for preferential or separate payment is common to the blockading powers. For this reason the Italian Government adopts all the arguments contained in the cases presented to this court by the Governments of Great Britain and of Germany.

## CONCLUSION.

Reserving the right to comment on such facts as may appear when the diplomatic correspondence relating to the Venezuelan protocols shall have been produced before the court by the other creditor powers, and also to discuss the effect of article 5 of the agreement of the 7th of May, the Italian Government calls upon the tribunal to examine and weigh the reasons above set forth, and in accordance with these reasons to decide that the other creditor powers who abstained from taking an active part in the controversy between the blockading powers and the United States of Venezuela are not entitled to deny the rights of the blockading powers to preferential or separate treatment, and that the 30 per cent of the customs receipts assigned as a security is one to which blockading powers are entitled in priority for the satisfaction of their claims.

AUGUSTO PIERANTONI.  
ALESSANDRO BOSDARI.

## CASE ON BEHALF OF BELGIUM.

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I. Whereas the intervened protocols between the powers and Venezuela plainly define the mission of the arbitral court of The Hague;

That the mixed commissions constituted at Caracas had to decide respecting the foundation of the claims invoked by the said powers, and consequently to decide if these claims would have the right to participate in the allotment of the 30 per cent of the customs revenues of La Guaira and Puerto Cabello; and that it was stipulated in the protocols that their decisions should be final and irrevocable;

That, on the other side, this allotment must be made by the arbitral court of The Hague, which is equally called upon to decree regarding Great Britain's, Germany's, and Italy's pretension to a preferential treatment on the 30 per cent with regard to the other powers, and to take into consideration, if necessary, the special advantages or the appropriations of revenues of which any power whatever would benefit;

That thus the said court has to give no decisions concerning the foundation of the claims, these points being solved by the mixed commissions' decisions, but its mission is limited to the distribution of the 30 per cent, according to conditions already specified;

Whereas especially the protocol signed by Belgium and Venezuela on the 7th of March, 1903, has settled, in the preceding terms, the fate of Belgian claims, and Belgium has equally adhered to the 7th of May's protocol, which especially alludes to the competency of the court of arbitration;

II. Whereas it is conformable to law, equity, and to the 7th of May's protocol that the distribution should be equally made between all the Belgian claims and those of the other powers admitted by the mixed commissions proportionally to their importance—that is to say, at so much in the pound;

Whereas, however, Germany, Great Britain, and Italy claim a privilege on the 30 per cent for their debts on account of the war they have carried on against Venezuela;

Whereas this question does not provoke the examination of the point to know if the facts of war were legitimate or not; that it is a question of the case that must be decided according to law;

Whereas the three powers above mentioned have no convention

agreed upon between themselves and this last country, neither a law nor even the least principle of the law of nations, to bring forward to sustain this pretension repelled moreover from the first by Venezuela; and that thus the said pretension is clearly antilegal and can not be entertained;

That the English, German, and Italian protocols show themselves clearly the want of any privilege regarding the claims referred to the mixed commissions, since Great Britain, Germany, and Italy have insisted on the immediate payment of certain sums specified in articles two of these protocols, a fact which could not be understood if, in their mind, a privilege was to be granted to them for all their claims;

Whereas, moreover, the claim of this privilege can only, in their idea, proceed from the use of force by Great Britain, Germany, and Italy, but that it would be iniquitous to thus reward governments that have had recourse to war to the detriment of those who have had confidence in the undertaken negotiations and who did not wish in any way to stray from pacific lines;

That, moreover, force is not a source of right, and that it is according to law that the court's decision must intervene;

That it is proper, besides, to remark that the three powers above mentioned have laid themselves open to a general arrangement not only with Venezuela, but also with the other claiming powers, and that with regard to these they bring forward no "grief," that it would thus be impossible to understand that these should be less well treated than themselves;

Whereas the said powers vainly argue that they have seized upon the customs revenues and that these constitute gages in their hands, but that a gage can not result from the use of force, and that, moreover, they have agreed by the protocols to relinquish the consequence of this appropriation and recognized that all justified claims of the interested powers should participate in the distribution of the 30 per cent;

Whereas finally, all the powers having recently had claims to settle with China have themselves delineated the way of proceeding in such case, by giving no preferential treatment to those who had seen the necessity of having recourse to war against the said State.

III. Whereas the claimed privilege being removed, it remains to decide, concerning Belgium on the distribution to which this State is entitled;

Whereas the Belgian debts admitted by the mixed commission at Caracas are three in number;

That the first is the claim of the post-office department of Belgium amounting to 8,249.36 francs (decision of 20th July, 1903);

That the second is the claim of Mr. Paquet amounting to 320,000 francs (decision of 30th August, 1903);

That the third is the claim of the Caracas General Water Supply Company, fixed by the mixed commission of 22d August, 1903, at 10,565,199.44 francs, that this commission has decided that the company would have to share for this debt in the distribution of the 30 per cent on condition of the payment of a guaranty of 4,000 francs, into the hands of the Société Générale of Brussels, and that from the 28th of August, 1903, this guaranty has been regularly paid and notified;

Whereas in reality the claim of the Caracas General Water Supply Company has been settled in 1895 in bonds of a "special internal debt" called "debt of the Caracas waters", which had to be successively redeemed, and thus constituted rently payments;

But from 1897 the Venezuelan Government has suspended the payment of these bonds interest and their redemption, and thus it renounced the mode of payment that had been stipulated; and it was owing to this motive that a new mode of payment had been decided between Belgium and Venezuela, viz, the company's participation in the 30 per cent from the time where the debt should be recognized as exigible by the mixed commission of Caracas;

That the said commission has attributed this character to the company's claim and has admitted it to the distribution of the 30 per cent and that, according to what has been stated above, its decision is definitive and irrevocable, and ties all parties concerned;

Whereas, superabundantly, it results from the protocols concluded between Venezuela, Germany, Great Britain, and Italy that these three last powers have admitted, concerning the distribution of the 30 per cent, the similar claims of the other powers and that the only claims excluded by the protocols from the 30 per cent distribution are those enunciated in articles 1 and 2 of these protocols for which a preferential treatment has been consented, and which bear no analogy with the Caracas General Water Supply Company's claim.

IV. Whereas, in these circumstances, it only remains to be seen if the Belgian claims do not "have the advantage of special appropriations of revenues," which advantages or appropriations would be alluded to in the 7th of May's protocol;

That the certain negative for the post-office department's claim and the claim of Mr. Paquet equally applies to the claim of the Caracas General Water Supply Company;

Whereas in fact the 31st of October, 1895, agreement by which the Caracas General Water Supply Company has transferred its grant to the Venezuelan State does not constitute any gauge or advantage whatever in the company's favor and that no ulterior convention has granted such;

Whereas in reality a Presidential decree dating from the 31st

October, 1895, has destined by measure simply administrative certain revenues for the redemption of bonds of the Caracas waters special debt, but that these revenues have not been constituted as pledges in the company's hands; that the decree has simply determined how and by which means the Government intended to pay the debt which the bonds of this special debt represented; that it was not tied by that, since, nine months after the transfer, a law of 18th June, 1896, assessed the custom revenues of Venezuela without taking any account of the destination intended in the 31st October, 1895, decree; that on the other hand a decree of 24th April, 1903, has leased for a ridiculous sum the water supply, thus proving that this supply did not constitute any pledge in the company's hands; that thus the company would be quite helpless to prosecute its rights on the resources forming the object of the destination of 31st October, 1895, which destination moreover was purely administrative; and that, consequently, the company has not the advantage of any special appropriation of revenue at the terms of the 7th of May's protocol;

Whereas, lastly, the 7th March protocol has stipulated that the Belgian claims, in which ranks the Caracas Water Company's debt, should be settled from the 30 per cent of the customs revenues from the time where they should be admitted by the Caracas mixed commission; that it had so sanctioned the preceding interpretation with Venezuela and Belgium assent, and that in any case it would have constituted substitution;

Whereas, if impossibly, a doubt could exist on this subject, the Belgian Government declares as much as it is needful, that it will relinquish all appropriations contemplated by the Presidential decree of 31st October, 1895, appropriations moreover made without effect, on which the Caracas General Water Company has no right and of which, as it has been proved above, it can not and does not benefit;

By these motives:

May it please The Hague Arbitral Court,

To repel, as not admissable nor founded, Great Britain's, Germany's, and Italy's conclusions against the claims produced by Belgium;

To decide by way of right that the claims of the post-office department of Belgium, of Mr. Paquet, and of the Caracas General Water Supply Company's debts to the extent, respectively, of 8,249.36 francs, of 320,000 francs, and of 10,565,199.44 francs, will participate in the distribution of the 30 per cent in the same measure and conditions as the other power's debts, that is to say, proportionately to their amount; to decide as to costs according to law.

CH. WOESTE.



## APPENDIX TO THE BELGIAN CASE.

FOREIGN OFFICE,  
Brussels, October 6, 1903.

DEAR SIR: In compliance with your request, I beg to inform you that in the settlement of the indemnities due by China, in consequence of the troubles of 1900, no preferential treatment has been accorded to the powers who had recourse to warlike measures. All the powers injured have been placed on the same footing, without any distinction having been made between the indemnities due for war expenses and those allowed to private individuals.

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Believe me, dear sir, yours sincerely,  
Monsieur WOESTE, *Minister of State*.

FAVEREAU.

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[French text of Belgian Case.]

I. Attendu que les protocoles intervenus entre les puissances et le Vénézuéla définissent nettement la mission du Tribunal Arbitral de La Haye;

Que les commissions mixtes constituées à Caracas avaient à se prononcer sur le fondement des créances invoquées par lesdites puissances, et à décider en conséquence si ces créances auraient droit à participer à la répartition des 30 pour cent des revenus des douanes de La Guaira et de Puerto Cabello; et qu'il était stipulé dans les protocoles, que leurs décisions seraient définitives et irrévocables;

Que, d'autre part, cette répartition doit être faite par le Tribunal Arbitral de La Haye, lequel est appelé en même temps à statuer sur la prétention de l'Angleterre, de l'Allemagne, et de l'Italie, qui invoquent sur ces 30 pour cent un privilège au regard des autres puissances, et à prendre le cas échéant, en considération les avantages spéciaux ou les affectations de revenus dont profiterait n'importe quelle puissance;

Qu'ainsi, le dit tribunal n'a pas à rendre de décisions relativement au bien fondé des créances, ces points étant résolus par les décisions des commissions mixtes, mais que sa mission est limitée à la répartition des 30 pour cent dans les conditions qui viennent d'être spécifiées;

Attendu, notamment que le protocole signé par la Belgique et le Vénézuéla, le 7 mars 1903, a réglé dans les termes qui précèdent le sort des réclamations belges, et que la Belgique a également adhéré au protocole du 7 mai visant spécialement la compétence du tribunal arbitral.

II. Attendu qu'il est conforme au droit, à l'équité et au protocole du 7 mai, que la répartition se fasse également entre toutes les créances de la Belgique et des autres puissances admises par les commis-

is mixtes, proportionnellement à leur import, c'est-à-dire au marc franc;

Attendu cependant que l'Allemagne, l'Angleterre, et l'Italie réclament sur les 30 pour cent un privilège pour leurs créances à raison des faits de guerre qu'elles ont posés contre le Vénézuéla;

Attendu que cette question ne provoque pas l'examen du point de savoir si ces faits de guerre étaient légitimes ou non; qu'elle est une question d'espèce, qui doit être tranchée conformément au droit;

Attendu que les trois puissances susdites n'invoquent à l'appui de leur prétention, repoussée d'ailleurs dès le premier jour par le Vénézuéla, ni une convention intervenue entre elles et ce dernier pays, ni une loi, ni même un principe du droit des gens; qu'ainsi ladite prétention est nettement antijuridique et ne peut être consacrée;

Que les protocoles anglais, allemand, et italien marquent eux-mêmes clairement l'absence de tout privilège pour les créances renouées aux commissions mixtes, puisque l'Angleterre, l'Allemagne, et l'Italie ont exigé le paiement immédiat de certaines sommes spécifiées dans les articles 2 de ces protocoles, chose qui ne se comprendrait pas si pour toutes leurs réclamations, un privilège devait dans leur pensée leur être octroyé;

Attendu, au surplus, que la revendication de ce privilège ne peut, dans son idée, découler que de l'emploi de la force par l'Angleterre, l'Allemagne, et l'Italie; mais qu'il serait inique de récompenser ainsi des gouvernements qui ont eu recours aux procédés de guerre au détriment de ceux qui avaient confiance dans l'issue des négociations engagées, et ne voulaient en rien se départir des voies pacifiques;

Que d'ailleurs la force n'est pas une source de droits, et que c'est au droit que la décision du tribunal doit intervenir;

Qu'il convient en outre de remarquer que les trois puissances susdites se sont prêtées à un arrangement général, non seulement avec le Vénézuéla, mais avec toutes les autres puissances réclamantes, qu'au regard de ces dernières, elles n'invoquent aucun grief; qu'on ne comprendrait donc pas que celles-ci fussent moins bien traitées qu'elles;

Attendu que lesdites puissances argumentent en vain de ce qu'elles sont emparées des revenus douaniers et que ceux-ci constituent un gage entre leurs mains; mais qu'un gage ne peut pas résulter de l'emploi de la force et que du reste elles ont consenti par les protocoles à renoncer aux conséquences de cet emploi et reconnu que toutes les réclamations justifiées des puissances en cause auraient part à la partition des 30 pour cent;

Attendu enfin que les puissances qui ont eu récemment des réclamations à élever contre la Chine ont elles-mêmes marqué la voie à suivre dans cette matière, en n'accordant aucun traitement préférentiel à celles

qui s'étaient vues obligées de recourir contre ledit Etat à l'emploi des mesures de guerre;

III.—Attendu que le privilège réclamé étant écarté il reste à statuer, en ce qui concerne la Belgique, sur la répartition à laquelle elle a droit;

Attendu que les créances belges admises par la commission mixte de Caracas sont au nombre de trois;

Que la première est celle de l'administration des postes de la Belgique montant à fr. 8,249.36 (décision du 20 juillet 1903);

Que la seconde est celle de M. Paquet montant à 320,000 francs (décision du 30 août 1903);

Que la troisième est celle de la Compagnie Générale des Eaux de Caracas, fixée par la commission mixte le 22 août 1903 à 10,565,199.44 francs; que cette commission a statué que la Compagnie aurait à intervenir pour cette créance dans la répartition des 30 pour cent moyennant versement d'un cautionnement de 4,000 francs entre les mains de la Société Générale à Bruxelles, et que dès le 28 août 1903 ce cautionnement a été versé et ensuite régulièrement notifié;

Attendu à la vérité que la créance de la Compagnie des Eaux de Caracas avait été réglée en 1898 en titres d'une " dette spéciale intérieure " dite " des Eaux de Caracas " lesquels devaient être successivement amortis et constituaient ainsi des paiements à terme;

Mais que dès 1897, le gouvernement vénézuélien a suspendu le paiement des intérêts de ces titres et leur amortissement; qu'ainsi il a abandonné le mode de paiement qui avait été stipulé; mais que c'est par ce motif qu'un nouveau mode de paiement a été arrêté entre la Belgique et le Vénézuéla, à savoir la participation de la compagnie à la répartition des 30 pour cent du moment où la créance serait reconnue exigible par la commission mixte de Caracas;

Que ladite Commission a attribué ce caractère à la créance de la compagnie et l'a admise à la répartition des 30 pour cent, et que, ainsi qu'il a été dit plus haut, sa décision est définitive et irrévocable; qu'elle lie toutes les parties en cause;

Attendu surabondamment qu'il résulte des protocoles conclus entre le Vénézuéla, l'Allemagne, l'Angleterre et l'Italie, que ces trois dernières ont admis au point de vue de la répartition des 30 pour cent les réclamations analogues ou semblables des autres puissances et que les seules réclamations exclues par ces protocoles de la répartition des 30 pour cent sont celles énoncées aux articles 1 et 2 de ces protocoles, pour lesquelles un traitement préférentiel a été consenti, et qui ne présentent aucune analogie avec la réclamation de la Compagnie Générale des Eaux de Caracas;

IV. Attendu que, dans ces circonstances, il ne s'agit plus que de savoir si les réclamations belges ne " profitent pas d'avantages spé-

ix ou affectations de revenus " lesquels avantages ou affectations été visés par le protocole du 7 mai;

que la négative, certaine pour les revendications de l'administration des postes et du sieur Paquet, ne l'est pas moins pour celles de la Compagnie Générale des Eaux de Caracas;

attendu, en effet, que la convention du 31 octobre 1895, par laquelle la Compagnie des Eaux de Caracas a cédé sa concession à l'Etat du Vénézuéla ne constitue aucun gage ni avantage quelconque en faveur de la compagnie et qu'aucune convention ultérieure ne lui en a été accordé;

attendu à la vérité qu'un décret présidentiel du 31 octobre 1895 a été destiné par mesure simplement administrative certains revenus à l'amortissement des titres de la dette spéciale des eaux de Caracas; mais que ces revenus n'ont pas été constitués à titre de gages aux mains de la compagnie; que le décret a simplement déterminé comment et à l'aide de quels fonds le gouvernement entendait payer la somme que représentaient les titres de cette dette spéciale; que par là il n'a été pas lié; qu'aussi neuf mois après la cession, une loi du 18 juin 1900 a réparti les revenus douaniers du Vénézuéla sans tenir compte de la destination projetée dans le décret du 31 octobre 1895; que d'autre part un décret du 24 avril 1903 a affirmé pour une somme fixe le service des eaux, marquant par là que ce service ne constituait pas de gage aux mains de la compagnie; qu'ainsi celle-ci se trouverait impuissante à faire valoir ses droits sur les ressources faisant l'objet de la destination du 31 octobre 1895, destination d'ordre purement administrative; que, par suite, elle ne profite d'aucun avantage spécial ou affectation de revenus dans les termes du protocole du 7 mai;

attendu enfin que le protocole du 7 mars 1903 a stipulé que les créances belges, parmi lesquelles figure la créance de la Compagnie des Eaux de Caracas, seraient payées sur les 30 pour cent des revenus douaniers, du moment où elles seraient admises par la commission mixte de Caracas; qu'il a donc consacré, de l'assentiment du Vénézuéla et de la Belgique, l'interprétation qui précède; qu'en tout cas il n'aurait opéré novation;

attendu que si par impossible un doute pouvait exister à cet égard, le gouvernement belge déclare pour autant que de besoin renoncer aux affectations projetées par le décret présidentiel du 31 octobre 1895, affectations d'ailleurs demeurées sans effet, sur lesquelles la Compagnie des Eaux de Caracas ne jouit d'aucun droit et dont, ainsi qu'il a été dit ci-dessus, elle ne profite pas et ne peut profiter;

Par ces motifs:

Renvoie au tribunal arbitral de La Haye:

Rejeter comme non recevables ni fondées les conclusions de l'Angleterre de l'Allemagne et de l'Italie à l'encontre des créances

produites par la Belgique; dire pour droit que les créances de l'administration des postes de Belgique, du sieur Paquet et de la Compagnie des Eaux de Caracas jusqu'à concurrence respectivement de 8,249.36 francs, de 320,000 francs et de 10,565,199.44 francs participeront à la répartition des 30 pour cent dans les mêmes conditions que les créances des autres puissances, c'est-à-dire proportionnellement à leur montant; statuer quant aux dépens comme de droit.

CH. WOESTE.

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ANNEXE AUX CONCLUSIONS.

MINISTRE DES AFFAIRES ETRANGÈRES.

*Bruxells, le 6 octobre 1903.*

MONSIEUR LE MINISTRE: Déférant au désir que vous m'avez exprimé, j'ai l'honneur de vous faire savoir que, pour le règlement des indemnités dues par la Chine à la suite des troubles de 1902, aucun traitement préférentiel n'a été accordé aux puissances qui avaient eu recours à des mesures de guerre. Toutes les puissances lésées ont été mises sur le même pied, sans qu'on ait distingué entre les indemnités dues pour frais de guerre et celles allouées aux particuliers.

\* \* \* \* \*

Veillez agréer, Monsieur le Ministre, les assurances de ma haute considération.

FAVEREAU.

Monsieur WOESTE, *Ministre d'État.*

## CASE OF THE FRENCH REPUBLIC.

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### INTENDED PREFERENTIAL TREATMENT OF THE BLOCKADING POWERS.

It is not our intention at all to explain the relations which have existed between Germany, Great Britain, and Italy on the one hand, and the United States of Venezuela on the other, and which led the three of the aforesaid powers to the use of means of coercion. Our intent is, as far as possible, to clear this case from its political elements and to consider it exclusively in law and equity by endeavoring to justify the pleadings we shall ask this tribunal to agree in deciding the litigious questions which are deferred to it.

A few words will suffice for an accurate statement of the situation, which the various Governments now addressing this tribunal are faced with.

When the question arose to determine under what conditions the allied powers should consent to the raising of the blockade established before the chief ports of Venezuela, the powers first required the immediate payment of certain claims, so-called first rank claims; as regards some other claims which were to be referred to mixed commissions, Venezuela was ready to set aside 30 per cent of customs revenues of La Guaira and Puerto Cabello; but on this point, and at the very beginning, an absolute difference arose. Venezuela's intention was that this 30 per cent should be divided among the powers entitled to present themselves as creditors, while, on the contrary, the allied powers contended that the same should be preferentially reserved for their own profit. The matter has not proved to be susceptible of agreement, as it is stated in the three separate protocols signed at Washington, on February 13, by the representatives of Venezuela on one part and those of Germany, Great Britain, and Italy on the other.

We will only analyze the Anglo-Venezuelan protocol taken as a standard. As regards the questions we intend to discuss in this argument, the particular differences offered by the three protocols are of importance.

After stating in Article I that the Venezuelan Government declares that they recognize in principle the justice of the claims which have



been preferred by the British Government on behalf of their subjects, the protocol (Article II) runs as follows:

The Venezuelan Government will satisfy at once, by payment in cash or its equivalent, the claims of British subjects, which amount to about £5,500, arising out of the seizure and plundering of British vessels and the outrages on their crews and the maltreatment and false imprisonment of British subjects.

[It is worth remembering at once that if the Italian Government have obtained the same payment of £5,500 for their first-rank claims, the German Government have required and obtained the much more important sum of 1,718,815 bolivars.]

Articles III and IV provide for the settlement by a mixed commission of a certain number of claims and are followed by Article V, which is of quite essential importance and the first two paragraphs of which must be quoted afresh:

The Venezuelan Government being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in Article III and similar claims preferred by other Governments, undertake to assign to the British Government, commencing the 1st of March, 1903, for this purpose, and to alienate to no other purpose, 30 per cent, in monthly payments, of the customs revenues of La Guaira and Puerto Cabello. In the case of failure to carry out this undertaking, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government, in respect of the above-mentioned claims, shall have been discharged.

Any question as to the distribution of the customs revenues so to be assigned and as to the rights of Great Britain, Germany, and Italy to a separate settlement of their claims shall be determined, in default of arrangement, by the tribunal at The Hague, to which any other power interested may appeal.

The Venezuelan Government, represented by Mr. Herbert W. Bowen, signed, with the different nations having claims against them, as many separate protocols purporting to settle these claims. It will be sufficient for us to quote the protocol signed with France on the 27th of February, 1903, whose Article V runs as follows:

In order to pay the total amount of the claims to be adjudicated as aforesaid, and other claims of citizens or subjects of other nations, the Government of Venezuela shall set apart for this purpose and alienate to no other purpose, beginning with the month of March, 1903, 30 per cent in monthly payments of the customs revenues of La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decision of The Hague Tribunal.

In case of the failure to carry out the above agreement, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government in respect of the above claims shall have been discharged.

The reference of the question above stated to The Hague Tribunal will be the subject of a separate protocol.

The arbitration provided for by the protocols of February 13, as well as by the subsequent protocols (February 19 with the United

es, February 23 with Mexico, February 27 with France, February with Netherlands, March 7 with Belgium, March 10 with Sweden Norway, April 2 with Spain) has been organized by the three tical protocols signed at Washington on the 7th of May, 1903, reen the allied powers and Venezuela. According to Article VI, nation having claims against Venezuela my join as a party in the tration provided for by this agreement. Thus it is that all the ers represented before this tribunal of arbitration have also be e, through their adhesion to the above-mentioned protocols, ies in this action.

he chief question the tribunal instituted under the protocols of ' 7, 1903, has to resolve, and which is the only one we intend to uss at present, is clearly stated in the said protocols (Article I, igraphs 1 and 2) as follows:

he question as to whether or not Great Britain, Germany, and Italy are led to preferential or separate treatment in the payment of their claims ast Venezuela shall be submitted for final decision to the Tribunal of The re.

enezuela having agreed to set aside 30 per cent of the customs revenues of Guaira and Puerto Cabello for the payment of the claims of all nations ast Venezuela, the tribunal at The Hague shall decide how the said revenues be divided between the blockading powers on the one hand and the other itor powers on the other hand, and its decision shall be final.

he duty this tribunal has to comply with, therefore, is exactly rmined; it is a duty of an essentially juridical character, and is the reason why we mentioned, at the beginning of this argu- t, that we wished to withdraw any political element from this ussion.

he first point we intend to consider is the respective situation of parties, in fact and in law—i. e., of the blockading powers on one d and of the so-called pacific or peace powers on the other hand. part from the so-called first-rank claims, whose immediate pay- t has been required by the allied powers as a condition of the ing of the blockade, it is to be noticed that when the discussion ed as concerns the 30 per cent offered by Venezuela for the other ns, that offer never was made purely and simply, and that, as far esults from the published correspondence, the representative of ezuela, Mr. Bowen, has, from the outset, clearly stated and always ciously contended that the 30 per cent should have to satisfy ain claims of various nations against Venezuela and not only the ns of the blockading powers, and consequently, according to Vene- a, all the powers must be placed exactly on the same footing as rds the apportionment of the 30 per cent.

will be sufficient, to ascertain the real character of this attitude

of Venezuela, to quote a few extracts from Mr. Bowen's correspondence. This is dated January 27, 1903:

I hereby agree that Venezuela will pay 30 per cent of the total income of the ports of La Guaira and Puerto Cabello to the nations that have claims against her, and it is distinctly understood that the said 30 per cent will be given exclusively to meet the claims mentioned in the recent ultimatums of the allied powers and the unsettled claims of other nations that existed when the said ultimatums were presented.

Another despatch of the same day, written by Mr. Bowen to the British ambassador, runs as follows:

DEAR SIR MICHAEL: Please do not fail to state in your cablegram that I can not consent to give preferential treatment to the allied powers, because, if the matter were referred to The Hague, all the creditor nations would be put on the same footing. The allied powers, therefore, should not try to press the point, as it would be unfair to do so.

Mr. Bowen emphasized his point of view in a short memorandum, which after long discussion was dictated by himself, on January 30, 1903, to the Italian and British ambassadors and to the German minister:

I object to paying first the claims of the allied and the claims of the other nations afterwards, because, first, I think it unjust and unfair and illegal to tie the hands of the said other nations for the period of five or six years that it would take to pay the claims of the allies; second, if I recognize that brute force alone can be respected in the collection of claims, I should encourage the said other nations to use force also; third, if the allied powers wanted preferential treatment, they should have asked for it in the beginning and should not now propose it after I understood clearly that all the conditions of the allied powers had been stated. If, however, this demand for preferential treatment is raised simply as a point of honor, I am willing to agree that the entire 30 per cent be paid to the allied powers for the first month.

Venezuela has always contended that this very clear attitude we are now pointing out was inspired by a sentiment of equity and of national honour. Her counsel further say, in their preliminary examination (p. 119), after recalling that Venezuela was compelled to submit to force,

And even then she preserved her national dignity by demanding that all her creditors should be placed upon the basis of exact equality, and all claims ascertained to be just should be paid, one equally with another. It is that contention, she is here, without possibility of pecuniary advantage to herself, to maintain.

We do not at all intend to contest that pretension, but it may be permitted to state that his attitude of Venezuela was absolutely natural and quite consistent with her rightful interest. She had, indeed, to be anxious not merely about her relations with the blockading powers, but also about her relations with the other powers having claims against her. She had to settle her position in such a way as could be accepted by all concerned. If the 30 per cent were

be exclusively or at least preferentially assigned to the blockading powers, the other nations would not have probably stood inactive and would have desired to provide for the settlement of their own claims; Venezuela would then have been obliged to face new exigencies. It was, therefore, of the greatest interest to her that her situation be settled by means of her offer of 30 per cent, and this settlement is not to be accepted by the pacific powers unless they be treated on an equal footing, or at least unless they had some chances of being so settled, an event which was to be realized if the matter in dispute were to be referred to the tribunal at The Hague.

We have not to examine whether, as the Venezuelan preliminary submission says (p. 115), the offer made by Venezuela of 30 per cent on an equal treatment to all nations, has ever been accepted by the allies. It is sufficient for our purpose to ascertain that, in the beginning, the 30 per cent were offered by Venezuela, not purely and simply as a lead, but under that express condition that every creditor power should be, in the distribution of those 30 per cent, on the footing of complete equality. The blockading powers have not been, therefore, at any moment, in possession of those 30 per cent, and they are unable to contend that they have been disturbed in this possession by any act of the other powers who had remained outside the military operations. The blockading powers can not take any advantage of the well-known maxim *age beati possidentes*. The true proposition resulting from the foregoing explanations is that the blockading powers do not possess more than 30 per cent more than the powers who joined afterwards and thus became parties to the agreement. Since the 1st of March, 1903, the 30 per cent are monthly deposited with the representatives of the Bank of England at Caracas, and the amount so paid shall be afterwards distributed in accordance with the decision of this tribunal. All the powers are therefore, as concerns the contended advantage, in an absolutely identical situation of fact. It is no question of ousting anybody, no one being in possession.

Under these circumstances the situation in law appears as very simple. Amongst the powers presented before this tribunal some claim a preferential or separate treatment, the others only ask for the ordinary law. Is not their respective character the character of plaintiff and defendant parties? Indeed, according to this tribunal's decision, to which we can but submit, that is of no consequence as regards the order according to which the memoirs shall be exchanged; they have to be and they shall be exchanged simultaneously, without prejudging in any way the character to be recognized to each party. But we are entitled to draw, as concerns the evidence, the logical consequences of the foregoing statement.

In every country and according to every legislation and also according to the data of good sense and equity, it pertains to the

plaintiff—i. e., to the party who pretends to innovate—to change the situation of fact and to go against the ordinary and normal state of things, to make the proof of its contention and to demonstrate why the situation of fact shall be modified to its benefit. Where it fails to do so, it must succumb. Thus, where both parties pretend to the ownership of a thing the onus probandi incumbs to the party which is not in possession; if he who is not in possession does not supply the judge with the proof of his right to ownership, the state of fact is maintained to the possessor's benefit. In the same way, finally, he who claims a privileged situation amongst the creditors of the same debtor has to establish the foundation for such an alleged preference.

It is sufficient to apply these general rules to this contest. The blockading powers, who, not more than the pacific powers, are in possession of the 30 per cent given up by the common debtor, are now claiming a treatment of favor, be this treatment qualified preferential or separate treatment; these powers have the onus of establishing their title to such a favor, and if not, their claim must be rejected. Should there be any doubt every privilege is to be laid aside and the ordinary law applied.

What is the ordinary law applicable in this matter? That seems very easy to ascertain according to the principles of the civil law as well as of the law of nations. In absence of any written law or precedents, it is necessary indeed to resort to the general principles of jurisprudence as being the expression of good sense. The community of law existing between the civilized nations is to be ruled according to these principles.

According to civil law, all the creditors of the same debtor enjoy equal rights on his estate, unless some cause of preference is clearly provided by law. Should the estate not be sufficient to satisfy them all, then there is, as the Germans say, a *konkurs*, and the proceeds of sale of the estate are divided proportionately among them.

According to the law of nations, every sovereign State is equal to each other, whatever be the difference of fact which separates them. This theoretical equality is often disregarded in fact, on account of political considerations, but it is necessary not to forget that, very fortunately, we stand in this case on the juridical ground. We have what is so often asked for in vain—*forum et jus*.

It is, therefore, in conformity with the ordinary law that the various States, creditors of Venezuela, shall have equal rights to such part of her resources which she, as their common debtor, has agreed to assign to them.

By what right do the blockading powers contend to withdraw this ordinary law in order to obtain the recognition of a preferential treatment for their own benefit?

We can at the present time only argue this point hypothetically, we shall, for the purpose of a complete discussion, wait until the 'leading powers' memoirs will have shown on what juridical system these powers are intending to rest. So far, affirmations and conclusions rather than proofs and demonstrations have been exposed in oral or written explanations that have been exchanged. Now, we are a party in a judicial suit, and the tribunal we respectfully request has to decide a juridical question by juridical means.

In a dispatch of January 30, 1903, of the Marquis of Lansdowne to the British ambassador at Washington, Sir M. Herbert, exists a paragraph that seems to be an attempt to justify the contended preferential treatment:

It seems that Mr. Bowen has not thought it possible to come to any arrangement which would not place on precisely the same footing all the powers who make claims for compensation from Venezuela.

This is, in the opinion of His Majesty's Government, quite at variance with international practice and with principles of equity, and except at the instance of the competent Tribunal of Arbitration, they could not assent to it.

This is rather short, and some further complete explanations seem necessary as regards such international practice and such principles of equity, which are said to support the alleged preferential treatment. No doubt these explanations will be found in the arguments which we shall then consider them in our reply.

Now let us consider how, by using force, a power can obtain a right preferential treatment against other powers.

It is not at all our intention to distinguish whether this use has been justified or not, and it is needless for us to say that we will not allow Venezuela on the political ground she has entered. The various circumstances under which the conflict between the three allied powers and Venezuela arose, as well as the different means which they resorted to, are absolutely outside this contest. The starting point of this discussion is precisely the result which has followed the military operations of the allies, i. e., the settlement contained in the protocols of February 13. The previous conduct of the parties belongs to history, to politics, but not to the tribunal we have the honor to address. It is therefore a simple question of jurisprudence which we intend to consider. Can the use of force, however justified it may be (and we do not ignore that, in certain cases, this use may, notwithstanding all the progress of pacific ideas, be the only means available to a government for the purpose of obtaining a rightful unity), constitute a *justa causa* of preference? On this matter it is necessary to abstain from confusion.

By violence, indeed, an advantage may result to its promoter, but at the innocent or guilty victim, be that advantage a payment,



a cession of territory, or any other profit. Some other states standing outside, may well have to suffer therefrom, but indirectly and only by repercussion. But it would be incomprehensible that such violence have direct consequences against third parties standing outside the quarrel, and it is obvious that it would be quite so in this case were our opponents' contention admitted by this tribunal. If the blockading powers had obtained a pure and simple assignment of 30 per cent of the Venezuelan customs revenues, then the other powers, creditors of Venezuela, would have been prejudiced, as any creditor would have been by the reduction of his debtor's estate. These other powers would have received an indirect offense, as if a portion of territory had been assigned by Venezuela. They would have resorted possibly to political considerations, and, with more difficulty, to real juridical considerations, against the carrying out of the agreement. But such has not been the case. Venezuela has, by various protocols, abandoned 30 per cent to all creditors, who have accepted to be satisfied with that settlement, at least as regards a certain category of claims. Amongst these creditors some of them pretend to be admitted first because of the coercion which was pressed upon the debtor and which urged this abandonment. The point is, therefore, to let the violence cause direct consequences against the third parties who remained outside. The dispute is not between the powers and Venezuela, for Venezuela has no pecuniary interest in the case, but only between the blockading powers and the others. It seems to us very difficult for this tribunal to admit that the blockade gave rise to such a right of preference.

The blockading powers will probably contend that owing to their military action they have been able to obtain from the Venezuelan Government a pledge which, in their opinion, will prove useful to the other powers, who will surely thus obtain a subsidiary security; and then, they will say, it is only just that they shall enjoy a more favorable treatment than the powers they have thus served. Is there not in this respect an argument to be found in the provisions of civil law relating to the creditor who has incurred expenses for the common benefit of the others—e. g., for the safety and for the sale of the common pledge—or in the provisions relating to the negotiorum gestor; that is to say, to the person who volunteered to render some necessary service to property in the absence of its owner?

The blockading powers had risks to run and expenses to incur. Is it not just that they be indemnified and that such indemnity be the preferential treatment?

If the preferential treatment claimed by the blockading powers were to be recognized, the benefit these powers would after all have afforded to the peace powers seems to be somewhat slight, seeing that the latter have renounced the use of any act of coercion

for the claims to which the 30 per cent are assigned and seeing that it is only in the far future that they would receive anything. If they had not been strongly confident in the strength of their case, it would not be supposed that they would have so easily consented to postpone for so long a time the payment of their claims.

Considering the argument by analogy to be found in the principles of civil law, it is easy to see that this argument is of no application whatsoever in the present contest. It is true, indeed, that when a creditor improves, or incurs expense to secure the common pledge on which he is entitled to a privilege which appears quite equitable. But when a privilege is granted to him not for the claim or claims he may extend against the common debtor, but only for such expenses as he has incurred in the common interest. As soon as the said expenses are refunded he is, as regards his other claims, in the same condition as his fellow-creditors, unless he be entitled in some other respect to a legal cause of preference. The same theory applies to negotiorum gestio; he who has acted for his neighbor shall be entitled to his expenses, but naught else.

If, therefore, according to the most favorable argumentation, we resort to the analogy with rules of the civil law, it shall be said that, when the blockading powers have really procured, to some extent, an advantage to the others, they shall certainly be entitled to claim a certain privilege proportionally to expenses incurred, but that they shall have no similar right in favor of their various claims themselves whose nature proper is not altered.

It is necessary to add at once that, in this case, the blockading powers have nothing of that sort to claim. In the protocols of February 13, 1903, determining under what conditions the pacific relations between the powers and Venezuela were to be resumed, no provision is to be found concerning the war expenses. It is therefore natural to infer that the allied powers did not intend to claim anything on that account. Moreover, when transactions were carried on for the purpose of drawing out the act, now the protocol of May 7, 1903, the allied powers raised this question of indemnity. At any rate, the British ambassador, Sir M. Herbert, in amending a draft submitted to him by Mr. Bowen, inserted the following provision:

“No preferential or separate treatment is not given to Great Britain, Germany, or Italy; the tribunal may consider whether any and what compensation should be made by Venezuela, out of the 30 per cent of the customs revenues set aside, to the powers for the expense which they have incurred in connection with the blockade.”

This amendment was peremptorily rejected by Mr. Bowen because it constituted a new demand or claim and consequently could have no place in this protocol nor in this controversy. It does not seem that the allied powers insisted; and, at any rate, the protocols of May 7

contain no provision in that respect and the allied powers have no right whatsoever to demand from this tribunal the grant of an indemnity for war expenses.

In fact, even in admitting the view of the blockading powers, it is not correct to say that their military action, expensive and risky as it may have been, conduced to no special advantage.

The blockading powers made a political display which they thought fit on account of Venezuela's conduct toward them. The British prime minister stated in Parliament that it was less purported to protect financial interests than to obtain satisfaction for outrages on British subjects. As regards their claims of first rank, the allied powers obtained indemnities the double character of which is worthy of notice. At first the settlement was imposed upon Venezuela without discussion, without any contradictory deliberation, furthermore, without any procedure of arbitration, and this could not fail to be keenly felt by Venezuela; secondly, the settlement had to be made in cash or in drafts payable on short terms. This was a second and no trifling advantage, if the debtor's financial situation is remembered as also the balance of certain debts, even of the most unquestionable character, e. g., debts resulting from solemn awards of arbitrators (*dette Fabiani*). This payment amounted to £5,500 for Great Britain, to the same sum for Italy, but to a much more important sum for Germany. The German claims, arising out of the civil wars from 1898 to 1900, amounted to 1,718,815 bolivars. The Venezuelan Government had to pay £5,500 at once, as they also did to Great Britain and Italy, and to pay the rest by means of five bills of exchange payable monthly from March to July, 1903,<sup>a</sup> so that the allies have finally received for their first-rank claims the no trifling sum of \$385,000.

Here is a special and direct advantage obtained through the armed intervention. It is indeed a real preferential treatment obtained from Venezuela's good will, without involving any principle of law.

Did the blockading powers themselves thus not ascertain to what extent they intended to derive an advantage from the action they had decided upon? By contending this right of preference for certain so-called first-rank claims, do they not acknowledge implicitly that their other claims shall be settled according to the ordinary law, and are they not somewhat unfounded in demanding for these other claims another preferential treatment, no longer to the detriment of Venezuela but to that of the other powers?

The blockading powers, may be, thought their contention to a preferential assignment of the 30 per cent had something exorbitant and risked legal rejection. In a dispatch dated January 29, 1903.

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<sup>a</sup> Blue Book, Venezuela, 1903, No. 1, No. 254.

from the Marquis of Lansdowne to Sir F. Lascelles, a conversation with the German ambassador is reported:

He told me that the German Government agreed with us in holding that the Venezuelan Government should be required to make special arrangement with the three blockading powers, under which their claims to compensation would be satisfied apart from those of other powers. The German Government considered that 30 per cent of the revenues of the two ports should be set apart for this purpose alone.

I told his excellency that it seemed to me worthy of consideration whether, if part of the customs revenue was appropriated, not for the satisfaction of the claims of all the creditor powers, but for that of the British, German, and Italian claims alone, we might not be content with rather less than the full 30 per cent offered to. It seemed to us that the allocation of an annual sum sufficient to liquidate our claims in, say six years, might be enough for our purpose, and we were instructed Sir M. Herbert to discuss the question with his German and Italian colleagues.

Instructions were accordingly given, and we know their contents through a dispatch, dated February 2, 1903, addressed by Mr. Bowen to Sir M. Herbert.

DEAR SIR MICHAEL: I have given due consideration to your Government's position that two-thirds of the 30 per cent of the customs receipts of La Guaira and Puerto Cabello be given to the allied powers and that the remaining third be paid to the peace powers. That proposition I must decline. I can accept even in principle that the preferential treatment can be rightly claimed by blockades and bombardment. It would be absolutely offensive to modern civilization to recognize that principle and to incorporate it into the law of nations, as it would have to be if the allied powers and the peace powers should agree to it and acknowledge it.

The composition proposed by the allied powers was not accepted. It, as it expresses some doubt on behalf of the interested parties themselves, concerning the value of their contentions as well as their chances of recognition, it is not without interest to state that the said position has been attempted.

We have just considered the question of preferential treatment in regard to the principles of equity, resorted to by the Marquis of Lansdowne in his dispatch, dated January 30, 1903, to Sir M. Herbert, an extract of which has been above reported. We have ascertained that, far from being favorable to the system contended for by the blockading powers, these principles were absolutely contrary to the same, since this system is quite at variance with the fundamental rules, grounded upon equity, of equality among creditors between States. Equality between States is to be considered as equality between private persons, and we have recalled the unquestionable principles which apply to the relations between private persons, and which, in default of any express rule of the law of nations, are, of course, to be extended to the relations between States. We have now to consider equity in a higher and more general

sense. We shall examine whether the contention of the blockading powers to a preferential treatment is in accordance with the ideas which have to rule international relations between civilized peoples, with the tendencies which are everywhere displayed to improve those relations, with those feelings shown with the utmost solemnity at the time of the peace conference and which have found their positive expression in the convention of July 29, 1899, signed by the blockading powers as well as by the other powers now represented before this tribunal, if not by Venezuela.

We have no hesitation to reply negatively.

The decision demanded from this tribunal by Germany, Great Britain, and Italy would not only be contrary to equity, but would also extremely endanger pacific relations and be quite at variance with the sentiments expressed in 1899 and with the convention itself, under whose shield now sits the tribunal to whom we respectfully address the present observations. There is in this matter, for the present as for the future, a point of great importance on which we beg leave to insist.

If, according to the contention of the allied powers, it be recognized by a judicial decision, whose authority will be unquestionable, that the mere fact by one or more States of exerting a violent coercion against another State affords to the promoters of the said violence a privileged situation as against the States standing outside the conflict, it may be said that it involves the early end of any regular and patient transaction as well as of any pacific arrangement for such States whose solvency is doubtful. The meetings of tribunals of arbitration, for which public opinion is now calling with the utmost eagerness, would then become more and more scarce. Let us suppose not a government seeking in more or less well-grounded claims some pretext to interfere in arms, to show their naval superiority, for example, but a government animated with the most pacific intentions, having to support most justified claims, perhaps already recognized by final arbitral awards, that government shall be fatally brought to resort to violence in order to be secure from the danger of military interference of another creditor government, and to guarantee not only the ordinary law but also the benefit of a privileged situation. In the present condition of our modern societies, and the duty of parliaments and of the press being as they are, a government will not be able to sacrifice the recognized right of their citizens to its most sincere pacific yearnings. That government will be affected by the passion of offended interests and of public opinion; they will, moreover, comply with what must be called a national duty, by preventing the rights of their citizens from being irremediably injured through indolence. The decision asked for by our oppo-



nents would, therefore, constitute a direct encouragement to the use and even to an early use of violence. It would not suffice to be violent, but it would be necessary to be violent the first—a premium to speed.

We do not entertain the illusion that the use of force can be banished from international relations, no more than from the domestic life of various states. Even standing on juridical ground, it is obvious that there are cases where this use of force is absolutely necessary to secure the respect of law. We do not intend to disregard the necessity of this extreme remedy. We only maintain that, in the juridical community constituted by civilized states, every attempt should be made to rarefy such remedy and that, on the contrary, such systems must be banished which render such a remedy more frequent.

This theory, the fallacy of which we are endeavoring to show, would lead to the saddest consequences as regards pacific relations, and humanity in general. A violent interference does not only disturb the relations between the interfering state and the state which has to bear such interference; it does not only injuriously modify the situation of that state's creditors, who are under the same conditions and who gave the same confidence to the state, or who have also been victims to acts despotic and unjust. Generally speaking, it also disturbs the political and commercial relations, and thus prejudices even such nations who have nothing to do with the conflicting states. That is what makes the political and economical gravity of any military action exerted against any state, however weak it may be, although such action shall not be terminated by war.

It is, therefore, of common and primary interest that the pacific relations, indispensable to the general welfare of humanity, of governments as well as of individuals, shall be disturbed as little as possible and that such disturbances shall not be incited. Equity therefore requires, no less imperiously than the law of nations, that decisions which would lead to more frequent use of force shall be rejected so long as they are not supported by positive and unquestionable reasons. Should doubts arise, then such decisions must be rejected. On this point the above-mentioned principles of law concerning evidence and the principles of equity combine.

If the foregoing considerations are naturally strong and recommend themselves to every man anxious for justice and for the amelioration of international relations, they seem to be more striking still under present circumstances. This Tribunal of Arbitration constituted by His Majesty the Emperor of Russia under the protocols of May 7, 1903, is sitting subject to the convention of July 29, 1899, whose provisions apply as far as they have not been expressly rejected by compromise, as has been the case as to the language to be used.



It will be sufficient to quote a few articles of this convention, for the purpose of conveying its meaning.

ARTICLE I. En vue de prévenir autant que possible le recours à la force dans les rapports entre Etats, les puissances signataires conviennent d'employer tous leurs efforts pour assurer le règlement pacifique des différends internationaux.

ARTICLE XVI. Dans les questions d'ordre juridique, et en premier lieu dans les questions d'interprétation ou d'application des conventions internationales, l'arbitrage est reconnu par les puissances signataires comme le moyen le plus efficace et en même temps le plus équitable de régler les litiges, qui n'ont pas été résolus par les voies diplomatiques.

Can this tribunal of arbitration, constituted under these generous principles, which the blockading powers themselves have not been slow to proclaim at the conference and to sanction by their signature, gave a decision contrary to the fundamental principles of its own institution and which, instead of contributing to the establishment of pacific precedents, would be the starting point of violences arising from the nature of things?

We can not believe it and we firmly hope to see the proclamation of the principle of the equality between States.

Is the international practice resorted to by the Marquess of Lansdowne in his already quoted dispatch in favor of the contrary contention more than in favor of the aforesaid principles of equity?

We intend to consider the precedents which may be alleged by our opponents. We confess we have found only one, but this one has the very valuable advantage of being recent and common to many States, among whom are precisely the States now engaged in this contest. This precedent strengthens, in most absolute terms, the thesis we have endeavored to demonstrate.

It is the expedition made in 1901 against China by Germany, Austro-Hungary, United States, France, Great Britain, Italy, Japan, and Russia. When that expedition, which proved to be very expensive and which required various sacrifices and risks, had induced the Chinese Government to composition, it became necessary to determine the sum to be required from China, either for expenses incurred or for indemnities arising out of breach of contracts, and outrages on foreigners, etc. How was the matter settled? A total sum was obtained from China and its liquidation provided by means of successive payments. It is useless to enter into detail as regards the relations of the powers with China; that is foreign to our present discussion.

What per contra is essential is to establish which were the powers whose claims have thus been settled on a footing of complete equality. We not only find amongst them the above-mentioned powers who interfered militarily, but also Belgium, Spain, Netherlands, Portugal, Sweden and Norway; that is to say, nations who remained outside the

military or naval operations and took no part whatever in the expenses or risks upon which so much stress is laid to-day. It did not, however, prevent the interfering powers from admitting those other powers to concur with them; all the creditor powers are paid in the same way and are submitted to the same delays.\* The military and naval action, together with its risks, has not been regarded as having given rise to a cause of preference prejudicing the powers who had taken no part in it. It is superfluous to add that the interfering powers thus behaved consistently with law and equity as well as with good international politics, in perfect knowledge of the case and in complete liberty. Without insisting on this point, we may be allowed to remark that they were evidently in position to impose another solution to the powers who had not joined the expedition. But we do not think fit to enter into any other detail about a precedent, which is common to the nations represented in this tribunal as well as to the nations represented by the parties to this contest.

Why should Germany, Great Britain, and Italy, who, in 1902, did not claim from China a preferential treatment, be entitled to such a treatment in 1903? We are unable to see in what the juridical situation is changed because the debtor is the Venezuelan instead of the Chinese Government.

We think accordingly that, besides the foregoing considerations of law and of equity, this tribunal of arbitration has but to resort to this precedent for deciding the question referred to it by Article I of the protocols of May 7, 1903, by refusing any preferential treatment to the blockading powers. In that way, the tribunal will give an award consistent with justice and equity as well as with international practice and the interest of humanity at large.

According to Article I of protocols of May 7, 1903, the tribunal

\* In Appendix to Venezuela's Case, p. 226, will be found the following list of apportionment to various powers of the sum of 450 million taels to be paid by China :

| Country.               | Per cent. | Per cent. | Taels.     | Taels.      |
|------------------------|-----------|-----------|------------|-------------|
| Germany.....           | 20.01567  | -----     | -----      | 90,070,515  |
| Austria.....           | .88976    | -----     | -----      | 4,008,920   |
| Belgium.....           | 1.88541   | -----     | -----      | 8,484,845   |
| Spain.....             | .09007    | -----     | -----      | 185,815     |
| United States.....     | 7.81979   | -----     | -----      | 32,989,055  |
| France.....            | 15.75072  | -----     | -----      | 70,878,240  |
| Great Britain.....     | 11.24901  | -----     | 50,620,545 | -----       |
|                        |           | 11.28951  | -----      | 50,712,795  |
| Portugal.....          | .02050    | -----     | 92,250     | -----       |
| Italy.....             | 5.91489   | -----     | -----      | 26,617,005  |
| Japan.....             | 7.73180   | -----     | -----      | 34,798,100  |
| Holland.....           | .17880    | -----     | -----      | 782,100     |
| Russia.....            | 28.97188  | -----     | -----      | 130,871,120 |
| International.....     | .06828    | -----     | 149,670    | -----       |
|                        |           | .04722    | -----      | 212,490     |
| Sweden and Norway..... | .01896    | -----     | 62,820     | -----       |
|                        |           |           |            | 450,000,000 |

has to decide another question; it has to decide how, when, and by whom the costs of this arbitration shall be paid. We do not intend to enter into any detail on this subject. We will only say that as, according to our system, the contention of blockading powers to a preferential treatment has no foundation whatsoever, and as it is these powers who have raised the contest and rendered the procedure of arbitration necessary, it is but fair that the said powers shall be charged with the costs, as happens to the succumbing party in every suit at law.

#### SUMMARY.

The 30 per cent of the customs receipts of La Guaira and Puerto Cabello have been assigned by Venezuela to all the powers having claims against her, for the purpose of an equal distribution amongst them. The blockading powers, after obtaining for some of their claims (so-called first-rank claims) an immediate settlement and payment, constituting to their own profit a serious advantage, have still demanded, as regards their other claims, a preferential treatment to the prejudice of the powers who had not interfered militarily. Venezuela has rejected this request, and it has been understood that this question of preferential treatment be settled by arbitration. It follows that the 30 per cent are not more in the possession of the blockading powers than in the possession of the so-called pacific powers, these 30 per cent being monthly deposited to the account of the proper person. All are therefore in the same situation of fact; some of them ask for a proportional distribution between the various claims to which the common pledge is affected; others contend, on the contrary, for a privilege of their claims. These latter unquestionably ask for a derogation to ordinary law, for a priority, the existence of which they must demonstrate, and if not, they will succumb in their contention, in accordance with the principles commonly recognized in matters of evidence.

Preferential treatment can be justified neither by the principles of equity nor by international practice.

The principle is the equality among the creditors of a common debtor, as well as among States. An act of violence, however rightful in itself, can not give rise to direct consequences against third parties, as would be entirely the case in this contest. This contest exists now, not between the allied powers and Venezuela, but between the blockading powers and the others, as regards a pledge which has been offered to the latter as well as to the former, so that preferential treatment would really be a direct consequence of the violence, to the prejudice of the foreign powers, and that can not be admitted.

The idea according to which the blockading powers had rendered a service to the others by their intervention can not justify the preferential treatment. Besides the fact that this service will have been

of little importance if the pacific powers have no right to the 30 per cent until after the entire satisfaction of the blockading powers, a creditor who is of any use to his fellow-creditors, by securing the common pledge, may pretend indeed to a privilege for his expenses, but not for his various claims themselves, the nature of which is not altered. In the present case, finally, the blockading powers have renounced the payment of their expenses. They no longer pretend they have derived no profit from their interference, because they have obtained without discussion the payment of their first-rank claims, thus leaving their other claims subject to the rule of ordinary law.

The international practice also can not be alleged in favor of the preferential treatment. The case of the Chinese expedition in 1901, which is common to the powers represented before this tribunal, shows on the contrary how the militarily interfering powers have admitted, on the same footing of equality, such other powers, who, as Belgium, Spain, or Netherlands, had taken no part in the military operations. There is no reason for admitting in 1903 a rule different from the rule followed without difficulty in 1902 by powers, among whom were Germany, Great Britain, and Italy.

The denial of any preferential treatment to the blockading powers, thus justified by the principles of law and equity, by international practice, is still recommended by the serious consequences that would result from a contrary decision. Such a contrary decision would be of a nature to incite to violence against states of doubtful solvency, and that would be manifestly inconsistent with the letter and spirit of the provisions agreed by the powers in 1899, as well as with the general interest of humanity.

In consequence of all these considerations, we beg this tribunal of arbitration to reject—with costs, according to Article V of the protocol of May 7, 1903—the preferential treatment claimed by Germany, Great Britain, and Italy, as regards the 30 per cent of the customs revenues of the ports of La Guaira and Puerto Cabello, assigned by Venezuela to the various powers, her creditors.

On behalf of the Government of the French Republic:

LOUIS RENAULT, *Agent*.

EDOUARD CLUNET, *Counsel*.

HENRI FROMAGEOT, *Commissioned Secretary*.

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APPENDIX.

*Protocol between the French Republic and United States of Venezuela, relating to the settlement of French claims.*

[Signed at Washington, February 27, 1903.]

The undersigned, Herbert W. Bowen, plenipotentiary of the Republic of Venezuela, and J. J. Jusserand, ambassador of the French

Republic, duly authorized by their respective Governments, have agreed upon and signed the following protocol:

ART. 1. All French claims against the Republic of Venezuela, which have not been settled by diplomatic agreement or by arbitration between the two Governments, shall be presented by the French foreign office, or by the French legation at Caracas, to a mixed commission, which shall have power to examine and decide the said claims. The commission is to consist of two members, one of whom is to be appointed by the President of Venezuela and the other by the President of the French Republic.

It is agreed that Her Majesty the Queen of the Netherlands will be asked to appoint an umpire. If either of said commissioners or the umpire should fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor was. Said commissioners and umpire are to be appointed before the first day of May, 1903.

The commissioners and the umpire shall meet in the city of Caracas on the first day of June, 1903. The umpire shall preside over their deliberations and shall be competent to decide any question on which the commissioners disagree. Before assuming the functions of their office the commissioners and the umpire shall take solemn oath carefully to examine and impartially decide according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the record of their proceedings. The commissioners, or, in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation.

The decisions of the commissioners and, in the event of their disagreement, those of the umpire, shall be final and conclusive. They shall be in writing. All awards shall be made payable in French gold or its equivalent in silver.

ART. 2. The commissioners, or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim, and to hear oral or read written arguments made by the agent of each Government on every claim. In case of their failure to agree in opinion upon any individual claim the umpire shall decide.

Every claim shall be formally presented to the commissioners within thirty days from the day of their first meeting, unless the commissioners or the umpire in any case extend the period for presenting the claim not exceeding three months longer. The commis-

sioners shall be bound to examine and decide upon every claim within six months from the day of its first formal presentation, and in case of their disagreement, the umpire shall examine and decide within a corresponding period from the date of such disagreement.

ART. 3. The commissioners and the umpire shall keep an accurate record of their proceedings. For that purpose, each commissioner shall appoint a secretary versed in the language of both nations to assist them in the transaction of the business of the commission. Except as herein stipulated, all questions of procedure shall be left to the determination of the commission, or in case of their disagreement, to the umpire.

ART. 4. Reasonable compensation to the commissioners and to the umpire for their services and expenses, and the other expenses of said arbitration, are to be paid in equal moieties by the contracting parties.

ART. 5. In order to pay the total amount of the claims to be adjudicated as aforesaid and other claims of citizens or subjects of other nations, the Government of Venezuela shall set apart for this purpose and alienate to no other purpose, beginning with the month of March, 1903, 30 per cent in monthly payments of the customs revenues of La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decision of The Hague Tribunal.

In case of the failure to carry out the above agreement, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government in respect of the above claims shall have been discharged.

The reference of the question above stated to The Hague Tribunal will be the subject of a separate protocol.

ART. 6. All existing and unsatisfied awards in favor of France shall be promptly paid, according to the terms of the respective awards.

Done in duplicate, in English and French texts, at Washington, this 27th day of February, 1903.

(Signed)

JUSSERAND.

HERBERT W. BOWEN.

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[French text.]

Nous n'avons nullement l'intention d'exposer les relations qui ont existé entre l'Allemagne, la Grande-Bretagne et l'Italie, d'une part, les Etats-Unis du Vénézuéla de l'autre, et qui ont amené l'emploi de moyens de coercition de la part des premières de ces puissances. Nous entendons dégager le plus possible l'affaire de ses éléments politiques et nous placer exclusivement sur le terrain du droit et de



l'équité, pour essayer de justifier les conclusions que nous demanderons au tribunal arbitral d'adopter dans la solution des questions litigieuses qui lui sont soumises.

Peu de mots suffisent pour préciser la situation dans laquelle se trouvent les divers gouvernements qui s'adressent actuellement au tribunal.

Quand il s'est agi de régler les conditions auxquelles les trois puissances alliées consentiraient la levée du blocus mis devant les principaux ports du Vénézuéla, les puissances ont exigé d'abord le paiement immédiat de certaines réclamations dites de premier rang : pour d'autres réclamations qui devaient être soumises à des commissions mixtes, le Vénézuéla offrait d'affecter 30 pour cent du revenu des douanes des ports de La Guaira et de Puerto Cabello. Mais, sur ce point, se produisait dès le début une divergence absolue : le Vénézuéla entendant que les 30 pour cent seraient répartis entre toutes les puissances pouvant se dire ses créancières, les alliés prétendant au contraire qu'ils leur fussent réservés par préférence. L'accord ne put se faire comme l'établissent les trois protocoles distincts, signés le 13 février 1903 à Washington, par les représentants du Vénézuéla d'une part, de l'Allemagne, de la Grande-Bretagne, de l'Italie de l'autre.

Nous nous contenterons d'analyser le protocole anglo-vénézuélien pris comme type. Pour les questions que nous nous proposons de discuter dans ce mémoire, les différences de détail que présentent les trois protocoles n'ont pas d'importance. Après avoir dit, dans l'article 1<sup>er</sup>, que le gouvernement vénézuélien déclare reconnaître en principe la justice des réclamations présentées par le gouvernement britannique dans l'intérêt de ses sujets, le protocole continue ainsi dans l'article 2 :

The Venezuelan Government will satisfy at once, by payment in cash or its equivalent, the claims of British subjects, which amount to about £5,500, arising out of the seizure and plundering of British vessels and the outrages on their crews, and the maltreatment and false imprisonment of British subjects.

(Il convient de noter dès maintenant que, si le gouvernement italien a obtenu la même somme de 5,500 livres sterling pour ses réclamations de premier rang, le gouvernement allemand a demandé et obtenu la somme beaucoup plus élevée de 1,718,815 bolivars.)

Les articles 3 et 4 déterminent le règlement par une commission mixte d'un certain nombre de réclamations, puis vient l'article 5 d'un intérêt tout à fait essentiel et dont les deux premiers alinéas doivent être reproduits :

The Venezuelan Government being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in Article III, and similar claims preferred by other governments, undertake to assign to the British Government, commencing the 1st day of March, 1903, for this purpose,

and to alienate to no other purpose 30 per cent in monthly payments of the customs revenues of La Guaira and Puerto Cabello. In the case of failure to carry out this undertaking, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government, in respect of the above-mentioned claims, shall have been discharged.

Any question as to the distribution of the customs revenues so to be assigned, and as to the rights of Great Britain, Germany, and Italy to a separate settlement of their claims, shall be determined in default of arrangement by the tribunal at The Hague, to which any other power interested may appeal.

Le gouvernement vénézuélien, représenté par M. Herbert W. Bowen, signa avec les divers pays ayant des réclamations contre lui des protocoles destinés à les régler. Il nous suffira de citer le protocole, signé avec la France le 27 février 1903, et dont l'article 5 est ainsi conçu :

Afin de pouvoir payer le montant total des réclamations qui doivent être réglées comme il est dit plus haut et celui des autres réclamations de citoyens ou sujets d'autres nations, le gouvernement du Vénézuéla, à partir du 1<sup>er</sup> mars 1903, mettra de côté, à cet effet, par versements mensuels, et n'affectera à aucun autre objet, 30 pour cent sur les revenus des douanes de La Guaira et Puerto Cabello, et les sommes, ainsi mises à part, seront partagées et distribuées conformément à la décision du tribunal de La Haye.

Au cas où l'arrangement ci-dessus viendrait à n'être pas exécuté, des fonctionnaires belges seront chargés des douanes des deux ports et les administreront jusqu'à ce que le gouvernement vénézuélien ait rempli les engagements résultant pour lui des réclamations susdites.

Le renvoi au tribunal de La Haye de la question susindiquée fera l'objet d'un protocole séparé.

L'arbitrage prévu par les protocoles du 13 février comme par les protocoles intervenus postérieurement (19 février avec les Etats-Unis, 23 février avec le Mexique, 27 février avec la France, 28 février avec les Pays-Bas, 7 mars avec la Belgique, 10 mars avec la Suède et la Norvège, 2 avril avec l'Espagne) a été organisé par les trois protocoles identiques signés à Washington le 7 mai 1903 entre les puissances alliées et le Vénézuéla. D'après l'Article VI, any nation having claims against Venezuela may join as a party in the arbitration provided for by this agreement. C'est ainsi que toutes les puissances représentés devant le tribunal arbitral sont devenues, par leur adhésion auxdits protocoles, également parties à l'instance.

La question principale que le tribunal arbitral, organisé en vertu des protocoles du 7 mai 1903, est chargé de résoudre, la seule que nous nous proposons de discuter quant à présent, est nettement posée dans les termes suivants par lesdits protocoles (art. 1<sup>er</sup>, al. 1 et 2) :

The question as to whether or not Great Britain, Germany, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the tribunal at The Hague.

Venezuela having agreed to set aside 30 per cent of the customs revenues of

La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading powers on the one hand and the other creditor powers on the other hand, and its decision shall be final.

La mission du tribunal est ainsi bien déterminée: C'est une mission d'ordre essentiellement juridique et c'est pour cela que nous avons iniqué dès le début que nous écarterions les éléments politiques du litige.

La première chose que nous proposons d'examiner est la situation respective, en fait et en droit, des puissances bloquantes d'une part, des puissances dites pacifiques (peace powers) de l'autre.

En dehors des réclamations dites de premier rang dont le paiement immédiat était exigé par les puissances alliées comme condition de la levée du blocus, quand la discussion s'engagea sur les 30 pour cent que le Vénézuéla offrait pour les autres réclamations, il est à remarquer: 1° que cette offre n'a jamais été de sa part pure et simple; 2° que, comme il résulte de la correspondance publiée, M. Bowen, représentant le Vénézuéla, a, dès le début, clairement indiqué et toujours maintenu avec ténacité que les 30 pour cent devaient servir à acquitter certaines dettes du Vénézuéla envers les divers pays, mais non pas seulement envers les puissances bloquantes; toutes les puissances devant, d'après le Vénézuéla, être exactement sur le même pied quant à la répartition des 30 pour cent.

Il suffit, pour bien caractériser cette attitude du Vénézuéla, de citer quelques passages des dépêches de M. Bowen. En voici une du 27 janvier 1903:

I hereby agree that Venezuela will pay 30 per cent of the total income of the ports of La Guaira and Puerto Cabello to the nations that have claims against her, and it is distinctly understood that the said 30 per cent will be given exclusively to meet the claims mentioned in the recent ultimatums of the allied powers and the unsettled claims of other nations that existed when the said ultimatums were presented.

Autre dépêche du même jour adressée par M. Bowen à l'ambassadeur de la Grande-Bretagne:

DEAR SIR MICHAEL: Please do not fail to state in your cablegram that I can not consent to give preferential treatment to the allied powers, because, if the matter were referred to The Hague, all the creditor nations would be put on the same footing. The allied powers, therefore, should not try to press the point, as it would be unfair to do so.

M. Bowen accentuait son point de vue dans une note dictée par lui, le 30 janvier 1903, aux ambassadeurs d'Italie et de Grande-Bretagne et au ministre d'Allemagne, après une longue discussion:

I object to paying first the claims of the allies and the claims of the other nations afterwards because, first, I think it unjust and unfair and illegal to tie the hands of the said other nations for the period of five or six years that it would take to pay the claims of the allies; second, if I recognize that brute

force alone can be respected in the collection of claims, I should encourage the said other nations to use force also; third, if the allied powers wanted preferential treatment, they should have asked for it in the beginning and should not now propose it after I understood clearly that all the conditions of the allied powers had been stated. If, however, this demand for preferential treatment is raised simply as a point of honor, I am willing to agree that the entire 30 per cent be paid to the allied powers for the first month.

Le Vénézuéla a toujours affirmé que cette attitude très nette que nous relevons lui était inspirée par un sentiment d'équité et d'honneur national. Dans leur preliminary examination (p. 119), ses conseils disent encore, après avoir rappelé que le Vénézuéla dut se soumettre à la force :

And even then she preserved her national dignity by demanding that all her creditors should be placed upon the basis of exact equality, and all claims ascertained to be just should be paid, one equally with another. It is that contention, she is here, without possibility of pecuniary advantage to herself, to maintain.

Nous n'entendons en rien contester une pareille affirmation, mais il est permis d'ajouter que cette attitude du Vénézuéla était toute naturelle et pleinement conforme à ses intérêts légitimes. Il devait se préoccuper, en effet, non seulement de ses rapports avec les puissances bloquantes, mais aussi de ses rapports avec les autres puissances qui avaient des réclamations contre lui. Il lui fallait faire un règlement qui pût être accepté par les unes et par les autres. Si les 30 pour cent avaient dû être affectés exclusivement ou au moins par préférence aux puissances bloquantes, les autres ne seraient probablement pas restées inactives et auraient aussi voulu pourvoir au règlement de leurs réclamations; le Vénézuéla aurait eu ainsi à faire face à de nouvelles exigences. Il avait donc le plus grand intérêt à ce que la situation fût liquidée par son offre de 30 pour cent et cette liquidation ne pouvait être acceptée par les puissances non bloquantes que si elles devaient être traitées sur le même pied ou, tout au moins, que si elles devaient la chance de l'être, ce qui arrivait au cas où la question devait être soumise au tribunal de La Haye.

Nous n'avons pas à rechercher si, comme le dit la preliminary examination du Vénézuéla (p. 115), l'offre faite par le Vénézuéla des 30 pour cent avec un traitement égal pour toutes les nations a été un moment acceptée par les alliés. Il suffit, pour notre démonstration, de constater que, dès le début, les 30 pour cent ont été offerts par le Vénézuéla non pas purement et simplement, mais sous la condition formelle que toutes les puissances créancières seraient, pour la répartition de ces 30 pour cent, sur le pied d'une parfaite égalité. Donc, à aucun moment, les puissances bloquantes n'ont eu la jouissance de ces 30 pour cent et ne peuvent prétendre qu'elles ont été troublées dans cette jouissance par les autres puissances étrangères à l'action militaire. Elles ne peuvent se prévaloir du fameux adage: beati possi-

dentes. La vérité qui résulte des explications précédentes est que les puissances bloquantes n'ont pas plus les 30 pour cent que les puissances qui ont adhéré postérieurement et sont ainsi devenues parties au traité. Depuis le 1<sup>er</sup> mars 1903, les 30 pour cent sont mensuellement déposés, pour le compte de qui de droit, entre les mains du représentant de la Banque d'Angleterre à Caracas et les sommes ainsi recueillies seront réparties conformément à la décision du tribunal. Toutes les puissances sont donc ainsi, quant à l'avantage prétendu, dans une situation de fait absolument identique. Il ne s'agit de déposséder personne, puisque personne n'est en possession.

Cela étant, la situation en droit apparaît très simple. Des puissances représentées devant le tribunal, les unes réclament un traitement préférentiel ou séparé, les autres se contentent du droit commun. Leur rôle respectif n'est-il pas celui de demanderesses et de défenderesses? Sans doute, d'après la décision du tribunal à laquelle nous n'avons qu'à nous soumettre, il n'y a pas de conséquence à tirer de là quant à l'ordre dans lequel les mémoires des parties doivent être échangés; ils doivent l'être et le seront simultanément sans que rien ait été préjugé quant au rôle à assigner à chaque partie. Mais nous avons le droit de tirer, au point de vue de la preuve, la conséquence logique de la constatation qui vient d'être faite.

En tout pays et en toute législation, conformément d'ailleurs aux données de bon sens et de l'équité, c'est au demandeur, à celui qui prétend innover, changer la situation de fait, aller contre l'état ordinaire des choses, à faire la preuve de sa prétention, à démontrer pourquoi la situation de fait doit être modifiée à son profit. S'il ne réussit pas dans cette démonstration, il doit succomber. C'est ainsi que, dans le cas où deux parties prétendent également à la propriété d'une chose, la preuve est à la charge de celle qui n'est pas en possession de cette chose; si le non possesseur ne fournit pas la preuve de son droit de propriété, l'état de fait est maintenu au profit du possesseur. De même, la personne qui prétend être créancière d'une autre doit prouver son droit de créance; de même enfin, entre créanciers d'un même débiteur, celui qui réclame une situation privilégiée doit établir la cause de cette préférence prétendue.

Il suffit d'appliquer les règles générales au présent litige. Les puissances bloquantes qui, pas plus que les puissances non bloquantes, ne sont en possession des 30 pour cent abandonnés par le débiteur commun, réclament un traitement de faveur, qu'on le qualifie de traitement préférentiel ou séparé; elles ont le devoir de justifier de leur droit à une pareille faveur, sinon leur prétention doit être repoussée. En cas de doute, tout privilège est écarté et c'est le droit commun qui s'applique.

Quel est le droit commun en cette matière? Il paraît bien simple à établir d'après les principes du droit civil comme d'après les prin-



cipes du droit des gens. En l'absence de textes ou de précédents, on est bien obligé de recourir aux principes généraux du droit comme à l'expression du bon sens et ces principes doivent régir la communauté de droit qui existe entre les nations civilisées.

D'après le droit civil, les créanciers d'un même débiteur ont sur les biens de celui-ci des droits égaux à moins d'une cause de préférence clairement établie par la loi. Si les biens ne suffisent pas à les désintéresser tous, il y a, suivant l'expression allemande concours, et le produit des biens se répartit proportionnellement entre eux.

D'après le droit des gens, les Etats souverains sont égaux entre eux, quelles que puissent être les différences de fait qui les séparent. Cette égalité théorique est souvent méconnue en fait par suite de considérations politiques, mais il convient de ne pas oublier que très heureusement nous sommes ici sur le terrain du droit. Nous avons ce que souvent on réclame vainement: forum et jus.

Par conséquent, suivant le droit commun, les divers Etats créanciers du Vénézuéla ont un droit égal à la portion de ses ressources que leur débiteur commun a entendu leur affecter également.

A quel titre les puissances bloquantes prétendent-elles donc écarter le droit commun pour faire reconnaître à leur profit un traitement préférentiel?

Nous ne pouvons, quant à présent, procéder que par conjecture et nous devons attendre, pour une discussion détaillée, que les mémoires des puissances bloquantes nous aient fait connaître le système juridique sur lequel elles comptent s'appuyer. Jusqu'à présent, en effet, les échanges d'explications qui ont eu lieu verbalement ou par écrit nous ont plutôt fait connaître des affirmations et des prétentions que des démonstrations et des justifications. Nous sommes parties à un débat judiciaire et le tribunal auquel nous soumettons respectueusement ce mémoire a mission de trancher une question juridique par des moyens juridiques.

Dans une dépêche adressée, le 30 janvier 1903, par le marquis de Lansdowne à sir M. Herbert, ambassadeur de la Grande-Bretagne à Washington, nous trouvons un passage qui paraît un essai de justification du traitement de faveur réclamé.

It seems that M. Bowen has not thought it possible to come to any arrangement which would not place on precisely the same footing all the powers who have claims for compensation from Venezuela.

This is in the opinion of His Majesty's Government, quite at variance with international practice and with principles of equity, and, except at the instance of some competent tribunal of arbitration, they could not assent to it.

Cela est très sommaire et des explications un peu détaillées seraient nécessaires au sujet de cette pratique internationale et de ces principes de l'équité qui seraient dans le sens du traitement de faveur réclamé.



Nous trouverons sans nul doute ces explications dans les mémoires et nous les apprécierons dans notre contre-mémoire.

Demandons-nous comment l'emploi de la force par une puissance peut être pour elle une cause de préférence à l'encontre d'autres puissances.

Nous n'entendons nullement distinguer suivant que cet emploi était ou non justifié et nous n'avons pas besoin de répéter que nous ne suivrons pas le Vénézuéla sur le terrain politique où il s'est engagé. Les circonstances dans lesquelles s'est produit le conflit entre les trois puissances alliées et le Vénézuéla, les moyens auxquels il a été recouru sont absolument en dehors du débat actuel. Le point de départ de ce débat est précisément le résultat auquel aboutit l'action militaire des alliés, c'est-à-dire le règlement contenu dans les protocoles du 13 février 1903; la conduite antérieure des parties est du ressort de l'histoire, de la politique, non du tribunal devant lequel nous avons l'honneur de plaider. C'est donc une pure question de droit que nous entendons traiter : l'emploi de la force, si justifié qu'il puisse être,—et nous ne méconnaissons pas que, dans certains cas, malgré tous les progrès des idées pacifiques, cet emploi ne puisse être le seul moyen pour un gouvernement d'obtenir une satisfaction légitime—peut-il être une juste cause de préférence? Mais ici on doit se garder de toute confusion.

La violence peut sans doute avoir pour résultat de procurer un avantage à l'auteur de la violence contre la victime, innocente ou coupable de cette violence, que cet avantage se présente sous la forme d'une prestation pécuniaire, d'une cession de territoire ou toute autre. Des Etats étrangers au différend pourront bien en souffrir, mais par voie indirecte seulement, par répercussion. Ce que l'on ne comprendrait pas, c'est que cette violence produisît des effets directs contre les tiers étrangers à la querelle, et ce serait précisément ici le cas si la prétention de nos adversaires était admise. Si les puissances bloquantes s'étaient fait céder purement et simplement 30 pour cent des revenus des douanes vénézuéliennes, les autres puissances créancières du Vénézuéla en auraient souffert, comme un créancier souffre de la diminution des ressources de son débiteur; elles auraient été indirectement atteintes comme si une portion de territoire avait dû être cédée par le Vénézuéla. Elles auraient pu invoquer peut-être des raisons politiques, plus difficilement des raisons proprement juridiques, contre l'exécution des arrangements intervenus. Mais les choses ne se sont point passées de cette façon. Le Vénézuéla a, par divers protocoles, abandonné 30 pour cent à l'ensemble de ses créanciers qui ont accepté d'être réglés de cette façon pour une certaine catégorie de leurs créances. Parmi ces créanciers, il en est qui prétendent venir avant les autres à raison de la coercition

exercée contre le débiteur et ayant déterminé l'abandon. Il s'agit donc de faire produire à la violence des conséquences directes contre les tiers étrangers à cette violence. Le débat n'est pas entre les puissances et le Vénézuéla, celui-ci n'a pas d'intérêt pécuniaire dans le litige, mais entre les puissances bloquantes et les puissances pacifiques. Il nous paraît difficile que le tribunal admette que le blocus ait donné un pareil droit de préférence aux premières au détriment des secondes.

Les puissances bloquantes diront probablement que, grâce à leur action militaire, elles ont obtenu du gouvernement vénézuélien un gage qui, même dans leur opinion, sera utile aux autres puissances en leur assurant une garantie subsidiaire et qu'alors il est juste qu'elles soient dans une condition plus favorable que les puissances auxquelles elles auraient rendu service. Ne pourrait-on pas argumenter en ce sens des dispositions du droit civil concernant le créancier qui a fait des frais dans l'intérêt de tous, pour la conservation et la réalisation du gage commun, ou la personne qui a géré l'affaire d'autrui?

Les puissances bloquantes ont couru des risques, fait des dépenses, n'est-il pas juste qu'elles en soient indemnisées et l'indemnité consistera dans le traitement préférentiel.

Si le traitement préférentiel que réclament les puissances bloquantes leur était reconnu, l'avantage qu'elles auraient en définitive procuré aux autres puissances serait assez mince, puisqu'elles ont renoncé à user de mesures de coercition pour les créances auxquelles les 80 pour cent sont affectés et que c'est seulement dans un avenir éloigné qu'elles pourraient commencer à toucher quelque chose. Si elles n'avaient pas eu fermement confiance dans la bonté de leur cause, il n'est pas à supposer qu'elles eussent consenti si facilement à ajourner autant le paiement de leurs créances.

Si on examine l'argument d'analogie qui serait tiré des principes du droit privé, on constate qu'il ne peut en rien s'appliquer dans le litige actuel. Il est vrai que, quand un créancier a amélioré le gage commun, a fait des frais pour sa conservation ou sa réalisation, il a un privilège qui paraît très équitable. Mais ce privilège lui est accordé, non pas pour la créance ou les créances qu'il pouvait avoir contre le débiteur commun, mais seulement pour les frais qu'il a faits dans l'intérêt de tous. Une fois qu'il est rentré dans ces frais, il se trouve, pour ses autres créances, dans la même condition que ses co-créanciers, s'il n'a pas par ailleurs une cause légitime de préférence. La même théorie existe pour la gestion d'affaires. Celui qui a fait l'affaire d'autrui est indemnisé de ses dépenses et c'est tout.

Si donc, en raisonnant de la manière la plus favorable, on partait de l'analogie des règles du droit privé, on dirait que si, dans une certaine mesure, les puissances bloquantes ont procuré un avantage aux autres, elles peuvent bien réclamer un certain privilège proportion-

nellement aux frais qu'elles ont faits, mais non pour leurs diverses créances, dont la nature propre ne change pas.

Il est nécessaire d'ajouter aussitôt que, dans l'espèce, les puissances bloquantes ne peuvent rien réclamer de ce genre. Les protocoles du 13 février 1903, qui déterminent les conditions auxquelles les relations pacifiques devront être rétablies entre ces puissances et le Vénézuéla, ne contenant rien au sujet des frais de guerre, on devait en conclure naturellement que les puissances alliées n'entendaient rien réclamer de ce chef. Il y a plus : lorsque des négociations furent suivies pour la rédaction de l'acte qui est devenu le protocole du 7 mai 1903, les puissances alliées soulevèrent la question d'une indemnité. Du moins, Sir M. Herbert, ambassadeur de la Grande-Bretagne à Washington, amendant un projet qui lui avait été soumis par M. Bowen, y intercalait une disposition ainsi conçue :

If preferential or separate treatment is not given to Great Britain, Germany, and Italy, the tribunal may consider whether any and what compensation should be made by Venezuela, out of the 30 per cent of the customs revenues set aside to three powers for the expense which they have incurred in connection with the blockade.

Cet amendement fut péremptoirement écarté par M. Bowen à raison de ce qu'il constituait une nouvelle demande et, par suite, ne pouvait trouver place dans le protocole ni dans la discussion. Les puissances alliées ne paraissent pas avoir insisté ; dans tous les cas, les protocoles du 7 mai ne contiennent aucune disposition à ce sujet et les puissances alliées ne sont pas recevables à demander au tribunal de leur accorder une indemnité pour frais de guerre.

Du reste, même en se plaçant au point de vue des puissances bloquantes, il ne serait pas exact de dire que leur action militaire, coûteuse et chanceuse, n'a comporté pour elles aucun avantage spécial.

Elles ont fait une manifestation politique qu'elles jugeaient utile à raison des procédés à leur égard qu'elles reprochaient au gouvernement vénézuélien. Le premier ministre de la Grande-Bretagne déclarait au parlement qu'il s'agissait moins de protéger des intérêts financiers que d'obtenir satisfaction pour des outrages commis contre ses nationaux. Pour leurs créances dites de premier rang, les puissances alliées ont obtenu des indemnités qui ont eu un double profit assez notable : d'abord le règlement était imposé sans discussion, sans aucun examen contradictoire, encore moins sans procédure arbitrale, et cela a été particulièrement sensible au Vénézuéla ; en second lieu, le règlement devait être fait en espèces ou en traites à brève échéance, ce qui constituait un nouvel avantage non négligeable si l'on songe à la situation financière du débiteur, à l'arriéré de certaines dettes même des plus incontestables, comme celles résultant de sentences arbitrales solennelles (Fabiani). Le paiement s'est élevé à £5,500

pour l'Angleterre, à la même somme pour l'Italie, mais à une somme beaucoup plus élevée pour l'Allemagne. Les réclamations de celle-ci, à raison des guerres civiles de 1898 à 1900, montaient à 1,718,815 bolivars. Le gouvernement vénézuélien a dû payer comptant £5,500 comme à l'Angleterre et à l'Italie; il a dû, de plus, régler le surplus de la somme en cinq lettres de change échelonnées de mars à juillet 1903, de sorte qu'en définitive les alliés ont touché pour leurs créances de premier rang la somme non insignifiante de \$385,000.

Voilà qui correspond à un avantage spécial et direct acquis grâce à l'intervention armée. Il y a bien eu là un véritable traitement de faveur obtenu de la volonté du Vénézuéla sans qu'aucun principe de droit fût engagé.

Les puissances bloquantes n'ont-elles pas elles-mêmes déterminé ainsi la mesure dans laquelle elles entendaient tirer profit de l'action à laquelle elles s'étaient résolues? En réclamant ce droit de préférence pour certaines créances dites de premier rang, ne reconnaissaient-elles pas implicitement que leurs autres créances devaient être soumises au droit commun et ne sont-elles pas assez mal venues à réclamer pour ces dernières un nouveau traitement préférentiel non plus au préjudice du Vénézuéla, mais au préjudice des autres puissances?

Peut-être les puissances bloquantes ont elles-mêmes pensé que leur prétention de s'attribuer les 30 pour cent par préférence avait quelque chose d'exorbitant et courait risque de ne pas être accueillie par un tribunal. Une dépêche du Marquis de Lansdowne à Sir F. Lascelles, en date du 29 janvier 1903, rend compte d'une conversation avec l'ambassadeur d'Allemagne.

He told me that the German Government agreed with us in holding that the Venezuelan Government should be required to make special arrangements with the three blockading powers, under which their claims to compensation would be satisfied apart from those of other powers. The German Government considered that 30 per cent of the revenues of the two ports should be set apart for this purpose alone.

I told his excellency that it seemed to me worthy of consideration whether, if a part of the customs revenue was appropriated, not for the satisfaction of the claims of all the creditor powers, but for that of the British, German, and Italian claims alone, we might not be content with rather less than the full 30 per cent referred to. It seemed to us that the allocation of an annual sum sufficient to extinguish our claims in, say, six years, might be enough for our purpose, and we have instructed Sir M. Herbert to discuss the question with his German and Italian colleagues.

Des instructions ont été effectivement données et nous en connaissons la teneur par une dépêche, en date du 2 février 1903, adressée par M. Bowen à Sir M. Herbert.

DEAR SIR MICHAEL: I have given due consideration to your Government's proposition that two-thirds of the 30 per cent of the customs receipts of La

Gualra and Puerto Cabello be given to the allied powers and that the remaining third be paid to the peace powers. That proposition I must decline. I can not accept even in principle that preferential treatment can be rightly obtained by blockades and bombardments. It would be absolutely offensive to modern civilization to recognize that principle and to incorporate it into the law of nations, as it would have to be if the allied powers and the peace powers should agree to it and acknowledge it.

La transaction proposée par les puissances alliées n'a donc pas été acceptée. Il n'est pas sans intérêt de constater qu'elle a été tentée, parce qu'elle témoigne de doutes de la part des intéressés eux-mêmes sur le bien fondé de leurs prétentions et sur la chance qu'ils avaient d'en obtenir la reconnaissance.

Nous venons d'examiner la question du traitement préférentiel au point de vue des principes de l'équité, invoqués par le Marquis de Lansdowne dans sa dépêche à Sir M. Herbert, en date du 30 janvier 1903, dont un extrait a été reproduit plus haut. Nous avons constaté que ces principes, loin d'être favorables au système soutenu par les puissances bloquantes, lui étaient tout à fait contraires, puisque ce système est en désaccord avec les règles fondamentales, dictées par l'équité, de l'égalité entre les créanciers et de l'égalité entre les Etats. L'équité entre les Etats doit être appréciée comme l'équité entre les particuliers, et nous avons rappelé les principes incontestables qui s'appliquent dans les rapports entre les particuliers et qui, en l'absence de règles positives du droit des gens, doivent être naturellement étendus aux rapports entre les Etats.

Nous avons maintenant à nous préoccuper de l'équité dans un sens plus général et plus élevé. Demandons-nous si la prétention des puissances bloquantes à un traitement préférentiel est conforme aux idées qui doivent présider aux relations internationales des peuples civilisés, aux tendances qui se manifestent partout dans le but d'améliorer ces relations, aux sentiments manifestés de la manière la plus solennelle lors de la conférence de la paix et qui ont trouvé leur expression positive dans la convention du 29 juillet 1899 signée à La Haye par les puissances bloquantes comme par les autres puissances représentées devant le tribunal, si ce n'est par le Vénézuéla ?

Nous n'hésitons pas à répondre négativement.

La solution sollicitée du tribunal arbitral par l'Allemagne, la Grande-Bretagne et l'Italie, ne serait pas seulement contraire à l'équité; elle serait, de plus, extrêmement dangereuse pour les relations pacifiques et en complet désaccord avec les sentiments exprimés en 1899 et avec la convention même sous l'égide de laquelle siège le tribunal auquel nous soumettons respectueusement ces observations. Il y a là, pour le présent et pour l'avenir, un point de grande importance sur lequel on nous permettra d'insister.



Si, comme le demandent les trois puissances alliées, il est reconnu par une décision de justice dont l'autorité sera incontestable, que le fait par un ou plusieurs Etats d'exercer une coercition violente contre un autre Etat procure aux auteurs de la violence une situation privilégiée à l'égard des Etats restés étrangers au conflit, on peut dire que c'est la fin prochaine des négociations régulières et patientes comme des arrangements pacifiques pour les Etats dont la solvabilité est douteuse. La réunion des tribunaux l'arbitrage que l'opinion publique appelle de tous ses vœux deviendra de plus en plus rare. En supposant, non pas un gouvernement qui chercherait dans des réclamations plus ou moins fondées un prétexte pour intervenir militairement, montrer sa supériorité navale, par exemple, mais un gouvernement animé des intentions les plus pacifiques, ayant à soutenir les réclamations les plus justifiées, peut-être constatées par des sentences habituelles définitives, ce gouvernement sera amené fatalement à recourir à la violence pour se prémunir contre le danger d'une intervention armée de la part d'un autre gouvernement également créancier, et pour s'assurer non seulement le droit commun, mais le bénéfice d'une situation privilégiée. Etant donné l'état de nos sociétés modernes, le rôle des parlements, de la presse, un gouvernement ne pourra pas sacrifier les droits certains de ses nationaux à ses aspirations pacifiques les plus sincères. Il subira la pression des intérêts lésés, de l'opinion publique: il devra même remplir ce qu'on peut appeler un devoir national en ne laissant pas, par son inaction, compromettre d'une façon irrémédiable les droits de ses compatriotes. La sentence sollicitée par nos adversaires constituerait donc un encouragement direct à l'emploi de la violence et même à un emploi hâtif. Il ne suffira pas d'être violent, il faudra l'avoir été le premier; ce sera une prime de vitesse.

Nous ne nous faisons pas l'illusion de croire que l'emploi de la force peut être banni des relations internationales pas plus, d'ailleurs, que dans l'intérieur des divers Etats. Même en restant sur le terrain juridique, il est certain qu'il y a des cas dans lesquels cet emploi de la force est absolument nécessaire pour obtenir le respect du droit; donc nous n'entendons pas méconnaître la nécessité de ce remède extrême. Nous disons seulement que, dans la communauté de droit que forment les Etats civilisés, tous les efforts doivent tendre à recourir plus rarement à un pareil remède, et qu'il faut écarter résolument les systèmes qui en rendraient, au contraire, l'usage plus fréquent.

La théorie dont nous essayons de démontrer la fausseté aurait les conséquences les plus déplorables pour les relations pacifiques, pour l'humanité en générale. Une intervention violente ne trouble pas seulement les relations entre l'Etat qui la commet et l'Etat qui la subit: elle ne modifierait pas seulement d'une manière injuste les



rapports des créanciers de ce dernier Etat, qui sont dans une situation analogue, qui ont eu également confiance dans cet Etat ou qui ont été également victimes d'actes arbitraires et injustes. Elle trouble les relations politiques et commerciales d'une manière générale et, par suite, atteint même les Etats qui n'ont rien à démêler avec les Etats en conflit. C'est ce qui fait la gravité politique et économique de toute action armée contre un Etat même faible, encore que cette action ne doive pas aboutir à la guerre proprement dite.

Il y a donc un intérêt général de premier ordre à ce que les relations pacifiques, indispensables pour le bien de l'humanité, des gouvernements comme des particuliers, soient troublées le moins possible et à ce qu'on n'encourage pas un pareil trouble. L'équité commande non moins impérieusement que le droit des gens qu'une solution qui aurait pour résultat de rendre plus fréquent l'emploi de la violence soit écartée du moment qu'elle ne peut invoquer des raisons positives et non douteuses. S'il y a incertitude, elle doit être rejetée. Ici se combinent les règles du droit sur la preuve rappelées plus haut et les règles de l'équité.

Si les considérations qui viennent d'être présentées sont puissantes en elles-mêmes et se recommandent à tous ceux qui se préoccupent de la justice et de l'amélioration des rapports internationaux, elles paraissent avoir plus de force encore dans les circonstances actuelles. Le tribunal arbitral, constitué par S. M. l'Empereur de Russie en vertu des protocoles du 7 mai 1903, siège sous l'empire de la convention du 29 juillet 1899 dont les dispositions s'appliquent en tant qu'elles n'ont pas été formellement écartées par le compromis, comme cela a été le cas pour la langue à employer. Il suffit de rappeler quelques articles de cette convention pour en faire ressortir l'esprit :

**ARTICLE 1<sup>er</sup>.** En vue de prévenir autant que possible le recours à la force dans les rapports entre les Etats, les puissances signataires conviennent d'employer tous leurs efforts pour assurer le règlement pacifique des différends internationaux.

**ARTICLE 16.** Dans les questions d'ordre juridique, et en premier lieu dans les questions d'interprétation ou d'application des conventions internationales, l'arbitrage est reconnu par les puissances signataires comme le moyen le plus efficace et en même temps le plus équitable de régler les litiges, qui n'ont pas été résolus par les voies diplomatiques.

Le tribunal arbitral, constitué sous l'empire de ces principes généraux que les puissances bloquantes n'ont pas été les dernières à proclamer à la conférence et à consacrer par leur signature de la convention, peut-il rendre une décision qui serait contraire aux principes fondamentaux de son institution et qui, au lieu de contribuer à la création d'une jurisprudence pacifique, serait le point de départ d'actes de violence provoqués par la force des choses ?

Nous nous refusons à le croire et nous espérons fermement voir proclamer le principe de l'égalité entre les Etats.

La pratique internationale, invoquée par le marquis de Lansdowne dans la dépêche déjà citée, est-elle, plus que les principes de l'équité, favorable à la prétention que nous combattons?

Nous nous réservons d'examiner les précédents qui pourront être allégués par nos adversaires. Nous avouons n'en avoir trouvé qu'un, mais il a cet avantage fort appréciable d'être récent et d'être commun à un grand nombre d'Etats dont font précisément partie ceux qui sont engagés dans le litige actuel. Ce précédent confirme de la manière la plus absolue la thèse dont nous avons essayé de démontrer l'exactitude.

Il s'agit de l'expédition à laquelle ont procédé contre la Chine, en 1901, l'Allemagne, l'Autriche-Hongrie, les Etats-Unis, la France, la Grande-Bretagne, l'Italie, le Japon et la Russie. Quand cette expédition, qui a coûté des sommes considérables, qui a entraîné des sacrifices et des risques de divers genres, a amené le gouvernement chinois à composition, il a fallu déterminer la somme à demander à la Chine, tant pour les frais de l'expédition, que pour les indemnités dues à raison de violation de contrats, d'outrages contre des étrangers, etc. Comment a-t-il été procédé? Une somme globale a été réclamée à la Chine et des mesures ont été prises pour son acquittement au moyen de paiements échelonnés. Il n'est pas utile d'entrer dans des détails au sujet des rapports des puissances étrangères avec la Chine qui est en dehors de notre discussion.

Ce qui, au contraire, est essentiel, c'est d'indiquer les puissances dont les créances ont été ainsi réglées sur le pied d'une parfaite égalité. Nous n'y trouvons pas seulement les puissances mentionnées plus haut et étant intervenues militairement, mais aussi la Belgique, l'Espagne, les Pays-Bas, le Portugal, la Suède et la Norvège, c'est à-dire des nations restées étrangères aux opérations militaires ou navales, n'ayant en rien participé aux frais et aux risques dont on fait si grand état aujourd'hui. Cela n'a pas empêché les puissances intervenantes de les admettre à concourir avec elles; toutes les puissances créancières doivent être payées de la même façon, subir les mêmes délais. L'action militaire et navale avec ses risques n'a pas été considérée comme ayant créé une cause de préférence au détriment des puissances qui n'y avaient pas participé. Il est superflu d'ajouter que les puissances intervenantes ont tenu cette conduite conforme au droit et à l'équité, en même temps qu'à la bonne politique internationale, en pleine connaissance de cause et en pleine liberté. Sans qu'il y ait lieu d'insister, il est permis de faire remarquer qu'elles étaient évidemment en situation d'imposer une autre solution aux puissances qui ne s'étaient pas jointes à elles pour l'expédition. Nous ne croyons pas devoir entrer dans d'autres détails sur un pré-

cédent qui est commun aux pays représentés dans le tribunal lui-même comme aux pays représentés par les parties en litige.<sup>a</sup>

Pourquoi l'Allemagne, la Grande-Bretagne et l'Italie, qui, en 1902, n'ont pas réclamé en Chine de traitement préférentiel, auraient-elles droit à un pareil traitement en 1903? Nous ne voyons pas en quoi la situation juridique est changée parce que le débiteur est le gouvernement vénézuélien, au lieu d'être le gouvernement chinois.

Nous pensons donc qu'indépendamment des considérations de droit et d'équité précédemment invoquées, le tribunal arbitral n'a qu'à s'inspirer d'un pareil précédent pour résoudre la question qui lui est posée par l'article 1<sup>er</sup> des protocoles du 7 mai 1903, dans le sens du refus tout traitement préférentiel au profit des puissances bloquantes. De cette manière il rendra une sentence conforme à la fois à la justice, à l'équité, à la pratique internationale et aux intérêts de l'humanité tout entière.

D'après l'article 5 des protocoles du 7 mai 1903, le tribunal doit résoudre une autre question: il doit *decide how, when, and by whom the costs of this arbitration shall be paid*. Nous ne voulons entrer dans aucun détail à ce sujet. Nous nous contenterons de dire que, puisque nous soutenons que la prétention des puissances bloquantes à un traitement préférentiel n'est nullement fondée, il en résulte que ce sont ces puissances qui ont soulevé le litige et nécessité la procédure arbitrale, et qu'il est dès lors équitable qu'elles en supportent les frais comme cela est le cas dans tout procès pour le plaideur qui succombe dans sa prétention.

#### RÉSUMÉ.

Les 30 pour cent des revenus des douanes de La Guaira et de Puerto Cabello ont été cédés par le gouvernement vénézuélien à toutes les

<sup>a</sup> Dans l'Appendix au preliminary examination du Vénézuéla figure, page 227, le tableau suivant de la répartition proportionnelle entre les diverses puissances de la somme de 450 millions de taels promise par la Chine:

| Country.               | Per cent. | Per cent. | Taela.     | Taela.      |
|------------------------|-----------|-----------|------------|-------------|
| Germany.....           | 20.01567  | .....     | .....      | 90,070,515  |
| Austria.....           | .89976    | .....     | .....      | 4,008,980   |
| Belgium.....           | 1.88541   | .....     | .....      | 8,484,145   |
| Spain.....             | .08007    | .....     | .....      | 185,815     |
| United States.....     | 7.81979   | .....     | .....      | 35,989,055  |
| France.....            | 15.75072  | .....     | .....      | 70,878,840  |
| Great Britain.....     | 11.24901  | .....     | 50,680,545 | .....       |
|                        |           | 11.28951  | .....      | 50,712,735  |
| Portugal.....          | .02050    | .....     | 92,250     | .....       |
| Italy.....             | 5.91489   | .....     | .....      | 26,617,005  |
| Japan.....             | 7.78180   | .....     | .....      | 34,798,100  |
| Holland.....           | .17880    | .....     | .....      | 782,100     |
| Russia.....            | 28.97138  | .....     | .....      | 130,871,120 |
| International.....     | .08326    | .....     | 140,070    | .....       |
|                        |           | .04722    | .....      | 212,420     |
| Sweden and Norway..... | .01895    | .....     | 63,880     | .....       |
|                        |           |           |            | 450,000,000 |

puissances ayant des réclamations contre lui, pour être répartis également entre elles.

Les puissances bloquantes, après avoir obtenu pour certaines de leurs créances dites de premier rang un règlement et un paiement immédiats qui constituaient à leur profit un sérieux avantage, ont demandé encore pour leurs autres créances un traitement préférentiel au détriment des puissances qui n'étaient pas intervenues militairement. Le Vénézuéla a repoussé cette exigence et il a été entendu que cette question du traitement préférentiel serait réglée par arbitrage. Il résulte de là que les 30 pour cent ne sont pas plus en la possession des puissances bloquantes que des puissances dites pacifiques, les 30 pour cent étant mensuellement déposés pour le compte de qui de droit. Les unes et les autres sont donc dans la même situation de fait, les unes réclamant la répartition proportionnelle entre les diverses créances auxquelles est affecté le gage commun, les autres demandant au contraire un privilège pour leurs créances. Ces dernières demandent incontestablement une dérogation au droit commun, un droit de priorité, dont elles doivent nettement démontrer l'existence, sans quoi elles succomberont dans leur prétention, conformément aux principes communément admis en matière de preuve.

\* I. Le traitement préférentiel ne se justifie ni par les principes du droit, ni par ceux de l'équité, ni par la pratique internationale.

Le principe est l'égalité entre les créanciers d'un même débiteur comme entre les Etats. Un acte de violence, même légitime en soi, ne peut produire de conséquences directes contre les tiers, ce qui serait précisément le cas ici. Le litige existe actuellement non pas entre les puissances alliées et le Vénézuéla, mais entre les puissances bloquantes et les autres, en ce qui touche un gage affecté aux secondes comme aux premières, de sorte que le traitement préférentiel serait bien une conséquence immédiate de la violence se produisant au détriment des puissances pacifiques, ce qu'on ne saurait admettre.

II. L'idée que les puissances bloquantes auraient rendu service aux autres par leur intervention ne saurait justifier le traitement préférentiel. Outre que le service serait de faible importance si les puissances non bloquantes ne venaient sur les 30 pour cent qu'après que les puissances bloquantes auraient été entièrement désintéressées, un créancier qui rend service à ses co-créanciers en conservant le gage commun, peut bien réclamer un privilège pour ses frais, mais non pour ses diverses créances, dont la nature ne change pas. Dans l'espèce, d'ailleurs, les puissances bloquantes ont renoncé à se faire payer leurs frais. Elles ne peuvent non plus prétendre n'avoir tiré aucun profit de leur intervention, puisqu'elles ont obtenu le paiement sans discussion de leurs réclamations de premier rang, laissant ainsi leurs autres réclamations sous le régime du droit commun.

III. La pratique internationale ne saurait non plus être invoquée

en faveur du traitement préférentiel. Le précédent de l'expédition de Chine de 1901, commun aux puissances représentées devant le tribunal, montre au contraire les puissances qui sont intervenues militairement admettant sur le pied d'égalité les puissances qui, comme la Belgique, l'Espagne ou les Pays-Bas, n'avaient pris aucune part aux opérations militaires. Il n'y a pas de raison pour admettre, en 1903, une règle différente de celle qui a été pratiquée sans difficulté, en 1903, par des puissances au nombre desquelles se trouvaient l'Allemagne, la Grande-Bretagne et l'Italie.

IV. Le refus de tout traitement préférentiel aux puissances bloquantes, ainsi justifié par les principes du droit, de l'équité et par la pratique internationale, se recommande encore par les graves conséquences qu'entraînerait la solution contraire. Celle-ci, en effet, serait de nature à provoquer des actes de violence contre les Etats de solvabilité douteuse, ce qui serait manifestement en désaccord avec le texte et l'esprit des dispositions arrêtées par les puissances dans la convention de La Haye du 29 juillet 1899, sous l'égide de laquelle siège ce tribunal, non moins qu'avec les intérêts généraux de l'humanité.

Par toutes ces considérations,

Nous demandons au tribunal arbitral de rejeter le traitement préférentiel réclamé par l'Allemagne, la Grande-Bretagne et l'Italie, sur les 30 pour cent des revenus des douanes des ports de La Guaira et de Puerto Cabello cédées par le Vénézuéla aux diverses puissances créancières, et conformément à l'Article V du protocole du 7 mai 1903, de mettre les dépens de l'arbitrage à la charge de l'Allemagne, de la Grande-Bretagne et de l'Italie.

Pour le gouvernement de la République Française:

LOUIS RENAULT, *Agent*.

EDOUARD CLUNET, *Avocat conseil*.

HENRI FROMAGEOT, *Secrétaire de la délégation*.

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#### ANNEXE.

Les soussignés J. J. Jusserand, ambassadeur de la République Française à Washington, et Herbert W. Bowen, plénipotentiaire de la République du Vénézuéla, dûment autorisés par leurs gouvernements respectifs, sont tombés d'accord sur les termes du protocole ci-après et y ont apposé leur signature.

ART. 1<sup>er</sup>. Toutes les réclamations françaises contre la République du Vénézuéla, qui n'ont pas été réglées par arrangement diplomatique ou par arbitrage entre les deux gouvernements, seront présentées par le ministère français des affaires étrangères ou par la légation de France à Caracas à une commission mixte, siégeant à Caracas, qui

examinera et réglera ces réclamations, et qui se composera de deux membres, l'un nommé par le Président de la République Française, et l'autre par le Président du Vénézuéla.

Il est convenu que la désignation d'un surarbitre sera demandée à S. M. la Reine des Pays-Bas. Si l'un des deux commissaires ou le surarbitre venait à se trouver empêché de remplir ses fonctions ou les résignait, son successeur serait désigné immédiatement et de la même manière qu'il avait été nommé lui-même. Lesdits commissaires et le surarbitre devront être nommés avant le 1<sup>er</sup> mai 1903.

Les commissaires et le surarbitre se réuniront dans la ville de Caracas, le 1<sup>er</sup> juin 1903. Le surarbitre présidera leurs délibérations et aura compétence pour trancher toute question sur laquelle les commissaires se trouveront en désaccord. Avant d'entrer en fonctions, les commissaires et le surarbitre prêteront solennellement serment d'examiner avec soin et de régler avec impartialité, suivant la justice et les stipulations de la présente convention, toutes les réclamations qui leurs seront soumises, et la prestation de ces serments sera consignée dans les procès-verbaux de leurs travaux. Les commissaires, ou, dans le cas où ils se trouveraient en désaccord, le surarbitre, trancheront toutes les réclamations sur la base de l'équité absolue, sans égard pour les objections d'une nature technique, ni pour les dispositions de la législation locale.

Les décisions des commissaires, et dans le cas où ils n'arriveraient pas à une entente, celles du surarbitre, seront définitives et irrévocables. Elles seront formulées par écrit. Toutes les attributions d'indemnités seront payables en monnaie d'or de France ou son équivalent en argent.

ART. 2. Les commissaires ou le surarbitre, selon les cas, examineront et régleront lesdites réclamations exclusivement d'après les preuves ou renseignements fournis par les gouvernements respectifs ou en leur nom. Ils seront tenus de recevoir et d'examiner tous documents ou déclarations écrits qui leur seront présentés par les gouvernements respectifs ou en leur nom, à l'appui de, ou en réponse à toute réclamation, et d'entendre ou lire toute démonstration orale écrite faite par l'agent de chaque gouvernement pour chaque réclamation. Au cas où ils ne s'entendraient pas sur telle ou telle réclamation le surarbitre décidera.

Chaque réclamation sera officiellement présentée aux commissaires dans un délai trente jours à partir du jour de leur première réunion, à moins que les commissaires ou le surarbitre n'étendent pour quelqu'une d'elles, le délai de présentation de la réclamation. Ce nouveau délai ne pourra dépasser trois mois. Les commissaires seront tenus d'examiner et de régler chaque réclamation dans un délai de six mois, à partir du jour de sa première présentation officielle, et,



au cas où ils ne seraient pas d'accord, le surarbitre examinera et tranchera, dans un délai égal, à partir de la date du désaccord.

ART. 3. Les commissaires et le surarbitre tiendront des procès-veraux exacts de leurs travaux. A cet effet, les commissaires désigneront chacun un secrétaire versé dans la langue des deux pays et chargé de les assister dans les travaux de la commission. Les règles ci-indiquées mises à part, toutes les questions de procédure seront laissées à la décision de la commission ou, en cas de désaccord, à celui du surarbitre.

ART. 4. Les commissaires et le surarbitre recevront, pour leurs services et dépenses, une compensation raisonnable qui sera, de même que les autres dépenses dudit arbitrage, payable par moitié par les parties contractantes.

ART. 5. Afin de pouvoir payer le montant total des réclamations qui doivent être réglées comme il est dit plus haut et celui des autres réclamations de citoyens ou sujets d'autres nations, le gouvernement du Vénézuéla, à partir du 1<sup>er</sup> mars 1903, mettra de côté, à cet effet, par versements mensuels, et n'affectera à aucun autre objet, 30 pour cent sur les revenus de la douane de La Guaira et Puerto Cabello, et les sommes, ainsi mises à part, seront partagées et distribuées conformément à la décision du tribunal de La Haye.

Au cas où l'arrangement ci-dessus viendrait à n'être pas exécuté, des fonctionnaires belges seront chargés des douanes des deux ports et les administreront jusqu'à ce que le gouvernement vénézuélien ait rempli les engagements résultant pour lui des réclamations susdites.

Le renvoi au tribunal de La Haye de la question susindiquée fera l'objet d'un protocole séparé.

ART. 6. Toutes les attributions d'indemnités déjà réglées en faveur de la France, et non encore entièrement payées, seront promptement soldées, conformément aux termes de chaque décision.

Fait à Washington, en double exemplaire, en langue française et en langue anglaise, le 27 février 1903.

(Signé)

JUSSERAND.

HERBERT W. BOWEN.

## CASE OF THE NETHERLANDS.

In the case submitted for final decision to the tribunal at The Hague in virtue of the three protocols signed at Washington on May 7, 1903, by Venezuela on one side and Germany, Great Britain, and Italy respectively on the other side, and the Netherlands adhesion thereto given June 13, 1903, the agent of the Government of Her Majesty the Queen of the Netherlands requests that it may please the tribunal:

1°. To decide in the negative the question whether or not Germany, Great Britain, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela; and

2° To decide that in the distribution, among the creditor powers, of the 30 per cent mentioned in the three protocols of May 7, 1903, the claims of the Netherlands shall be treated on a footing of equality with the claims of the other interested powers "so that" (as it is said in the protocols) "no power shall obtain preferential treatment."

Respectfully submitted.

WECKHERLIN,

*Agent of the Netherlands Government.*

THE HAGUE, *October 12, 1903.*

### BRIEF TO ACCOMPANY THE ABOVE PETITION.

1°. Existing international law does not recognize the privileged treatment now claimed by Germany, Great Britain, and Italy.

2°. There does not seem to exist even one single precedent for the claim.

3°. On the contrary, what happened not long ago, at Peking, in the case of the indemnity paid "en bloc" by China to some European powers and to the United States of America disproves the pretension.

4°. The analogy with the principles of civil law, as laid down in the codes of civilized nations, is also contrary to the pretension.

5°. Moreover the negotiations which have led to the present arbitration do not support the claim to a preferential treatment in favor of any power whatsoever. About January 20 last Mr. Bowen reached Washington with full powers of the Venezuelan Government to negotiate simultaneously with all the interested parties on a footing of equality. It has not been proved that Mr. Bowen deviated from these instructions.

WECKHERLIN,

*Agent of the Netherlands Government.*

THE HAGUE, *October 12, 1903.*

## CASE ON BEHALF OF SPAIN.

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The Spanish delegate has received instructions from his Government to submit to the High Tribunal of Arbitration the following considerations and conclusions upon which His Catholic Majesty's Government found their opposition to the concession of preferential or separate treatment to Germany, Great Britain, and Italy in the matter of the payment of their claims against the United States of Venezuela.

1. Self-evident propositions, such as those which prevent the Spanish Government from grasping the motive of the pretension put forth by the allied powers to preferential treatment in the distribution of 30 per cent of the custom's revenues of La Guaira and Puerto Cabello, are above proof of any kind. The first of these maxims of the law of nations is the existence of a complete and natural equality among the States which constitute the international society of civilized peoples; the second, that the rights of a third party can neither be altered nor curtailed by acts or agreements in which it has had no part. Bluntschli (to quote an authority universally known and respected) says, in article 81 of his Code of International Law:

All states are equal because of their judicial personality. All have an equal part in international law.

Fiore affirms in article 358 of his code:

Each State has the right to be considered as belonging to the Society of Nations on an equal footing with the rest in matters pertaining to its judicial capacity, to the exercise of its rights, and to the fulfillment of its obligations.

The illustrious Phillimore also holds the protection of their respective legitimate subjects, whatever their place of abode, to be the case in which the right of equality between nations finds its primary and most important expression, and it is under this aspect that the question of debts contracted by the government of one State toward the subjects of another must be considered. (Int. Law, 3d ed., London, 1879. CXLVIII.) Can acts of war, such as the events of December to February last, alter this natural, complete, and unchangeable equality, which is one of the keystones of the whole fabric of international law? Have those acts, perchance, reduced Venezuela internationally to a situation of dependence with regard to the powers which have exercised hostile acts within her territory so far as to create for those powers and their subjects a right of preference

over every other State and its subjects in all concerning the Venezuelan Republic? No such deduction can be built upon the protocols of February 13, 1903, which put an end to the state of war, while those of May 7 expressly recognize that the above-mentioned 30 per cent shall be devoted to the payment of all the creditor powers mentioned in the said protocols.

His Catholic Majesty's Government have the right and the duty to ignore the events of those days. Spain's maternal affection toward a daughter nation, her persuasion that the friendship born therefrom was better adapted than acts of violence of incalculable consequences to obtain the recognition and ratification of her rights, impelled her from the first to abstain from seeking by force what she imagined would be given her in justice and good feeling. It was in this sense that His Catholic Majesty's minister in Caracas drew up his note of December 16, 1902, included in his dispatch No. 73, the text of which is as follows:

His Excellency Dr. R. LÓPEZ BARALT,

*Acting Foreign Minister of Venezuela, Caracas, December 15, 1902.*

YOUR EXCELLENCY: His Majesty's Government has been informed of the incidents of an international character which have lately occurred within the territory of the Republic, and having considered that as a consequence the Federal Government will have judged that the opportunity has now arrived for stipulating with the powers the mode of making good their respective claims at present pending against Venezuela, has thought fit to give me certain instructions for the defense of the rights and interests of Spanish subjects. The sentiments of sincere friendship which my Government entertains toward that of your excellency, my wish to maintain that cordiality which has ever constituted the foundation of our mutual relations, and particularly to avoid creating by the accomplishment of my official duties new difficulties for the Federal Government in its present arduous position, no less than the certainty that justice and equity alone will prevail in the decision to be adopted by the Government of the Venezuelan Republic in the settlement of the foreign claims, are all present to my mind in informing your excellency that the Government of His Majesty the King, my august sovereign, demands in favor of Spanish subjects the same treatment and privileges as those which may be granted to the most favored nation.

I avail myself, etc.,

R. GAYTÁN DE AYALA.

These manifestations were confirmed, as was only natural, in a more categorical and direct manner by His Majesty's foreign minister on December 18.

[Private.]

SIR: His Majesty's minister for foreign affairs has wired me the following cablegram:

*"Minister of Foreign Affairs to Spanish Minister, Caracas:*

*"Please inform Venezuelan Government that in consideration of the moral ties between Spain and South America we are decided not to associate ourselves with the claims sustained by the great powers with force of arms, feeling convinced that our cordial attitude will be duly appreciated by Venezuela, and will not injure our pending claims.*

*"ABARZUA."*

I am extremely gratified, Monsieur le Ministre, to think that His Majesty's Government, as soon as it was informed of the steps taken for the safeguard of Spanish interests in this Republic, has confirmed the wish I expressed in my note dated the fifteenth of this month as to sustaining the friendly understanding which exists between Spain and Venezuela.

The declaration so frankly expressed in the above-mentioned cablegram, in consequence of which Spain will not unite herself in the present difficult circumstances to the coercitive action of the great powers with the object of attaining the payment of her claims against Venezuela, is the most evident proof of the straightforwardness of her intention, and attests to the full the confidence inspired to her by the conduct that the Federal Government, in all fairness, will no doubt observe accordingly, so as to prevent Spanish interests from suffering any damage whatsoever when the moment arrives for the settlement of their assets and claims.

I avail myself, etc.,

R. GAYTÁN DE AYALA.

This noble behavior was appropriately recognized by the Government of the Venezuelan Republic in two notes dated December 16 and 19, and signed by Señor Baralt.

Are these methods of abstention and implicit trust to be allowed to produce results diametrically contrary to their purpose and, moreover, the loss of the very rights which were maintained and reserved by them, instead of being, as they should be, their strongest argument in the eyes of a just and equitable court such as the Tribunal of Arbitration? This idea is unsustainable, and the delegate of His Catholic Majesty's Government can not for a moment harbor the thought that any injury or curtailment of rights may possibly accrue to his country as the result of a series of acts from which, whatever their justification, Spain thought fit to abstain in the most frank and categorical manner.

2. Few legal propositions are more generally respected than that all acts between two parties neither favor nor harm him who has had no part in them. The graphic maxims of Roman law have embodied in written form this self-evident proposition of natural justice. Side by side with their best-known formula of *res inter alios acta aliis nec nocet nec prodest* (Tit. C. inter alios acta vel judicata aliis non nocere, 7, 60) we find these others of, *certissimum est ex alterius contractu neminem obligari* (L. 3 C. ne uxor pro marito 4, 12); *Nec paciscendo nec legem dicendo nec stipulando quisquam alteri cavere potest* (L. 75, 4, D de regulis juris 50, 17). These beautifully explicit propositions have been adopted by all writers on international law when defining the limits of the effect of treaties and acts of an international character. It will suffice in this respect to quote Fiore, paragraph 661, of his Code of International Law, the text of which is as follows:

When two or more States have stipulated in a treaty anything injurious to a third such an understanding shall be considered as of no effect with regard to the State not taking part in the treaty, without necessity of any protest from the same.

But it being so that these rules would have in any case been applicable, even had the protocols of February 13, 1903, granted preferential treatment to the allied powers; or, in other words, had those protocols allotted to the said powers the greater and better part of the revenues designated by Venezuela to the detriment of the nations which took no part in their hostile action, they must acquire still greater cogency after the proof of respect for the rights of others and the honorable spirit of straightforwardness shown by Venezuela in complying with the assurances given by her to Spain in December, 1902, and in her consenting only to the allegation of the pretensions of her late adversaries before the high tribunal.

Nor has the Government which I represent in adhering to the protocols of May 7, 1902, done more than put its trust in the righteousness of the arbiters who have been freely elected to decide, in consonance with the dictates of justice, as to the application of one of the most fundamental principles of justice itself.

It may be alleged by some that the above-mentioned propositions do not apply to the case at issue, begotten as it is by a state of war such as has been created, according to their own confession, by the action of the powers in Venezuela. But if this be allowed, then the doctrine of neutrality makes Spain's right still clearer in its unsurpassable integrity.

The fact that the existence of a warlike contest can not alter one tittle in the relations between each of the belligerents and the powers which continue to live with them in peace and righteousness can not escape the wisdom of a tribunal composed of men who have earned for themselves a well-deserved reputation as authorities in the science of international law. The position of a peaceful nation, of a *pacigérant*, if I may here use the happy expression coined by an illustrious member of the Permanent Court of Arbitration, M. le Chevalier Descamps, is not altered and can not be altered by the existence of a war among others. The rights of neutral nations and their subjects guaranteed by treaty or issuing from acts of commission or omission on the part of a belligerent Government, and which in no way refer to the existing state of war, preserve their entirety and continue to be as worthy of respect as in time of peace. "The neutral state continues to be at peace with both belligerents," says Bluntschli, in article 783 of his code. If the situation of Venezuela with regard to the allied powers was in fact a state of war, and its termination brought about a state of peace, then could neither one state nor the other modify Spain's rights as a neutral power in the first of those states, exactly as it in no way altered the legal and friendly relations which she maintained at the time with Germany, Great Britain, and Italy. The legitimate claims of her subjects in the South American Republic, which she always intended to make good by the most usual, legal,



and peaceful methods, are as far removed from that particular conflict and its consequences as from any other which the Government of Caracas might have sustained with any nation in Europe or America; neither could that conflict place her claims in a situation of inferiority with regard to those of another belligerent or nonbelligerent power. Hence it follows that neither the *jus pacis* nor the *jus belli* affords any lawful ground for a curtailment of my country's rights by the preferential treatment solicited in favor of others.

3. The real legal position of the case in point is, in my opinion as representative of His Catholic Majesty's Government, merely that of the allotment among different creditors of the property given over by a common debtor for the purpose of paying up his obligations. The Government of Venezuela, desirous of meeting its obligations in an honorable manner, renounces a percentage of its custom's revenue for the purpose of extinguishing those debts which may be finally proclaimed lawful by the decision of the committees of arbitration. The point to be determined, therefore, merely concerns the form in which the sum is to be allotted among those who have a right to it.

Civil law is universally recognized to be the natural and necessary complement of international law. International persons make contracts and possess property exactly in the same way as real persons, and the rules set forth by civil law for the working of their rights and mutual juridical relations must necessarily find their counterpart in international law.

Now, according to the rules of law recognized by legislators the world over, the acts of one or several of the creditors anterior to the payment of the debtor's obligations can have no influence upon the allotment of his property, no matter whether any of the said creditors may have petitioned previously for an injunction or endeavored to start proceedings individually against him. So long as no preceding mortgage exists all have the same rights without distinction and must receive the whole of the sums owing to them if the assets are sufficient therefor, or a reduction of the same should their value be less than the total of the debt. Venezuela having transferred her assets in favor of all her creditors by article 5 of the protocols of February 13 and again by article 1 of the protocols of May 7, there exists no legal title for granting a special mortgage or preference to any of the three claimant nations, neither can such a title exist because Venezuela made the grant of the property from which her debt is to be extinguished in the very instrument which provokes the question as to the manner of payment. The spirit of righteousness of the allied powers, so completely identified with their glorious history and so palpably shown by the fact of their referring with us to the decision of the high tribunal, excludes all idea of their wishing to found this

preferential title upon any but the strictest principles of law and justice.

Legally speaking, the superior or preferential right claimed can only be begotten of a state of peace, it being undeniable that international law does not allow that privileges and advantages other than those formally expressed and granted in time of peace can issue from a state of war. But if we recognize this final and peaceful character in the notes interchanged in January last by Mr. Bowen, in his capacity of plenipotentiary for Venezuela, and the representatives of Germany, Great Britain, and Italy, upon which rest the essential foundations of their agreement, we find in them no mention of the preference now claimed by the three allied nations. On the contrary, after demanding the immediate payment of certain sums the blockading powers are content to solicit the designation of committees of arbitration to judge the remaining claims.

This is a consideration upon which it is my intention to insist later on. At present I will merely examine the legal consequences of the silence observed at such a critical moment, for none can deny that the allied powers could at the time mentioned have put forward their claim to separate and preferential treatment and maybe have obtained it from the Venezuelan Government, in which case there would have been room for direct discussion between the said Government and the nations thus injured, such as Spain. The three blockading powers might, furthermore, have obtained the immediate payment of the whole and not of part only of their claims. But if it is not for the Government of His Catholic Majesty to judge the reasons and circumstances which influenced the proceedings of the three nations and prevented their endeavoring to obtain more ample rights, it has cause to declare itself entitled to affirm that the existence of those very reasons or circumstances explains why the supremacy or preference, which in our opinion they now vainly claim as a right, has not already been the object of a formal and universal recognition.

4. Yet another powerful argument can be adduced in favor of the demand which I have the honor to submit in the name of His Catholic Majesty's Government to the high tribunal and against the pretension of preferential or separate treatment for Germany, Great Britain, and Italy's claims against Venezuela—i. e., the precedent offered by the case between nine European powers—the United States of America and Japan on the one part and the Chinese Empire on the other, consequent to the serious disorders of which the said Empire was the scene during the months of May, June, July and August, 1900.

These grave events caused various powers (Germany, Austria-Hungary, the United States of America, France, Great Britain, Italy, Japan, the Netherlands, and Russia) to send troops and ships of war

to China in order to protect the lives of their representatives and subjects, as well as to reestablish order in the perturbed districts.

For reasons which it is unnecessary to mention here neither Spain, Belgium, nor Sweden and Norway took part in these naval and military operations, although the first two powers had representatives residing in Peking and all three had interests of different kinds in the Celestial Empire, to which circumstances may be added the important fact that the doyen of the diplomatic corps at Peking was His Catholic Majesty's minister.

Soon after the relief of the legations in the Chinese capital, the flight of the imperial court, and the defeat of the Boxers and regular troops, which had so long besieged the foreign residents in the diplomatic quarter, the representatives of the powers accredited to Peking, having received instructions to that effect from their respective governments, began to exchange views and held, during the months of October, November, and December, 1900, some fifteen sittings, or conferences, for the purpose of fixing and drawing-up irrevocable conditions the acceptance of which by China was to put an end to the situation created by the rebellion. As a result of these meetings a collective note, signed on December 22, 1900, by the representatives of Spain, Germany, Austria-Hungary, Belgium, the United States of America, France, Great Britain, Italy, Japan, the Netherlands, and Russia, was presented on the twenty-fourth of the same month to the Chinese plenipotentiaries, His Imperial Highness Koang, Prince Ching, and Li-Hung-Chang, Viceroy of the province of Pe-chi-li.

Paragraph the first of condition 6 of the said note reads as follows:

(a) Equitable compensation to the States, companies, private individuals, and Chinese who have suffered injury in their persons or property during the course of the late events on account of their being in the service of foreigners.

It is of importance to note the general character of the words "equitable compensation to the States, companies, private individuals, etc.," as also the fact that neither in this paragraph nor in any other does the note mention any kind of preferential rights or separate treatment in favor of any power whatsoever. On the contrary, paragraph (a) clearly recognizes the right to complete equality for all the powers, whether they had or not taken part in the previous naval and military action, with respect to the payment of the claims which they might have to prefer against China on account of the events of 1900. Moreover, in the minutes of the fifteen sittings held by the diplomatic corps in Peking during the months of October, November, and December, although the examination and wording of the conditions to be contained in the collective note were precisely the object of debate, it does not appear that the representatives of Germany, Great Britain, and Italy, or of any other of the powers which had taken part in the mili-

tary or naval operations, declared or even suggested that preferential or separate treatment was possible in favor of those powers. I may add that neither Portugal nor Sweden and Norway appear among the signatories of the collective note of December 22, 1900, and yet both the claims put forward later on by His Catholic Majesty's minister in the name of Sweden and Norway and those presented by the representative of Great Britain in the name of Portugal found exactly the same consideration as those preferred by the signatories of the collective note. From all this it most undoubtedly follows that the principles of equity and the just intentions which so clearly inspire the collective note of December 22, 1900, involved the recognition of complete equality among all the foreign states in the payment of their claims against China. Hence the difficulty of comprehending how Germany, Great Britain, and Italy, not having alleged in 1900 any ground for a right of preferential or separate treatment in the payment of their claims against China over the powers which had not taken part in their own military or naval action, can now demand this right in similar circumstances with respect to their claims against Venezuela.

5. The three blockading powers may, perhaps, endeavor to refute the import of the precedents just quoted by declaring that in the matter of the claims against China the principle was admitted that those claims included the expenses incurred by the military and naval operations necessitated by the rebellion, whereas the expenses of the blockade are not included in their claims against Venezuela, and they may thus argue the existence of dissimilarity between the two cases.

But this mistaken form of reasoning can be answered in turn by observing that the blockading powers in exacting as a previous condition for the cessation of their action the immediate payment of certain sums as compensation for some of their claims against Venezuela, allowed it to be ipso facto understood that at that time they in no way contemplated being considered as privileged creditors for the payment of other claims which they acknowledged could be proved and determined by mixed commissions if Venezuela consented to satisfy without demur the amount of the so-called first-class claims.

In fact, his excellency the British ambassador in Washington wrote as follows to his excellency Mr. H. W. Bowen, the Venezuelan plenipotentiary, in his note of January 23:

DEAR MR. BOWEN: Immediately after you left the embassy on the 20th instant I telegraphed to my Government your formal request that the blockade of the Venezuelan ports to be raised before the commencement of the negotiations in Washington.

I have now received a telegram from Lord Lansdowne in reply, setting forth the conditions which must be accepted by the Venezuelan Government before his lordship can comply with your request. They are as follows:

"1. The claims (small in pecuniary amount) arising out of the seizure and

plundering of British vessels and outrages on their crews, and the maltreatment and false imprisonment of British subjects, must be satisfied at once.

"2. The other claims for compensation, including railway claims and those for injury or wrongful seizure of property, must be met by an immediate payment to His Majesty's Government or by a guaranty adequate to secure them. These claims can be, if desired, examined by a mixed commission.

"3. An arrangement must be entered into to satisfy the claims of the bondholders, including a provision for definite sources of payment.

"4. There must be an exchange of notes between His Majesty's Government and that of Venezuela, renewing the convention of October 29, 1834.

"On learning that the negotiations have resulted in an agreement fulfilling the above conditions His Majesty's Government will at once give orders that the blockade of Venezuelan ports shall be raised. \* \* \*

Believe me, etc.,

MICHAEL H. HERBERT.

And Mr. H. W. Bowen answered in his note of same date:

DEAR SIR MICHAEL: In answer to your letter of to-day, stating the conditions on which Great Britain will raise the blockade of the Venezuelan ports, I have the honor to inform you that I accept those conditions, as they are substantially the same as those already accepted by the Venezuelan Government.

I therefore request that your Government give orders at once to have the said blockade raised.

Believe, me, etc.,

HERBERT W. BOWEN.

Next day the German chargé d'affaires in Washington sent Mr. Bowen the following note:

MY DEAR MR. MINISTER: With reference to the conversation we just had, I beg to state that the blockade of the Venezuelan ports will be raised by the Imperial German Government immediately, i. e., at the same time as Great Britain does so, if you sign the document which is herewith annexed and undertake, therefore, all the obligations herein contained.

Believe me, etc.,

A. QUADT,  
*Imperial German Chargé d'Affaires.*

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*Document mentioned in the preceding letter.*

I. As the Imperial German Government holds that the German claims originating from the Venezuelan civil wars of 1898 to 1900 are no more apt to be submitted to arbitration, the Government of Venezuela has to acknowledge at once these claims, amounting to 1,718,815 bolivars, circa \$325,000, and either to pay the said amount cash, without any delay, or, should this be impossible, to guarantee the speedy payment of them by warrants which are deemed sufficient by the Imperial German Government.

II. All the other claims which have already been brought to the knowledge of the Venezuelan Government, in the ultimatum delivered by the Imperial minister resident at Caracas, i. e., claims resulting from the present civil war, further claims resulting from the construction of the slaughterhouse at Caracas, as well as the claims of the German Great Venezuelan Railroad for the nonpayment of the guaranteed interest, are to be submitted to a mixed commission, should an immediate settlement not be possible.



III. The said commission will have to decide both about the fact whether said claims are materially founded and about the manner in which they will have to be settled or which guaranty will have to be offered for their settlement. Inasmuch as these claims result from damages inflicted on property or the illegal seizure of such property, the Venezuelan Government has to acknowledge its liability in principle, so that such liability in itself will not be an object of arbitration, and the decision of the commission will only extend to the question whether the inflicting of damages or the seizure of such property was illegal. The commission will also have to fix the amount of indemnity.

Mr. Bowen, having shown his full powers as representative of the Venezuelan Government, accepts herewith the three above-mentioned conditions without any reserve, and agrees to give to Germany the same guaranties that Mr. Bowen has given to Great Britain and which are stated in his letter to Sir M. Herbert, dated January 23, 1903, in confirmation whereof he has applied his signature under this document.

HERBERT W. BOWEN.

His excellency the Italian ambassador also wrote to Mr. Bowen on the same day as the German chargé d'affaires in the following terms:

MY DEAR MINISTER: With reference to the conversation we just had, I beg to state that the blockade of the Venezuelan ports will be raised by the Royal Italian Government immediately, i. e., at the same time as Germany and Great Britain do so, provided you sign a document in which, by virtue of the full powers granted to you by the Venezuelan Government, you bind yourself to give to my Government, for the Italian claims of every kind, the same guaranty you have given to Germany and Great Britain.

Believe me, etc.,

E. MAYOR DES PLANCHES.

The Venezuelan plenipotentiary answered on January 24, 1903:

MY DEAR MR. AMBASSADOR: In answer to your letter of this date, I have much pleasure in informing you that I hereby consent and agree to give for the Italian claims the same guaranty that I have given for the British and German claims.

Believe me, etc.,

HERBERT W. BOWEN.

None of these three notes, neither the British, the German, nor the Italian, mentioned any claim for compensation to Great Britain, Germany, or Italy on account of the expenses incurred through the blockade, nor any suggestion of preference over those of other powers in favor of the British, German, or Italian claims to be submitted to mixed commissions.

When Venezuela had already accepted the conditions set forth in the said notes, but only then, Germany, Great Britain, and Italy, apparently on the strength of the preference owing to them as a result of their hostile action and as a form of compensation for their expenses or military operations, declared to the Venezuelan plenipotentiary that in their opinion the claims of the blockading powers to be met out of the 30 per cent of the customs revenues at La Guaira and Puerto Cabello could not appear on a par with the similar claims of the nonbelligerent powers, but must be the object of some special arrangement.



Now, if Germany, Great Britain, and Italy conceived that they had a right to preferential or separate treatment with respect to claims which they regarded as debatable, or if they apprehended that some compensation was due to them on account of their military expenses, they should have demanded this preferential treatment or this compensation simultaneously with the other conditions set forth in the notes of January 23 and 24, 1903, above quoted, as, once the agreement was concluded, it was too late to come back upon it. Venezuela, and Mr. Bowen acting in her name, might perhaps have consented before the conclusion of the agreement effected by the notes of January 23 and 24 last, to satisfy a war indemnity to the blockading powers, but they certainly would not have consented—and this is proved by the whole tenor of the correspondence between Mr. Bowen and the representatives of Germany, Great Britain, and Italy, as well as by the full powers granted to Mr. Bowen, in which reference is made to the nations having claims against Venezuela—that is to say, clearly, all nations in such circumstances—they would never have consented, we say, to recognize the right to preferential or separate treatment alleged by the three blockading powers in favor of their claims payable out of the proceeds of the said 30 per cent.

That Venezuela would and did not consent to such recognition is clearly shown by the text of the declaration handed by Mr. Bowen on January 23 to the British ambassador at Washington, which affirms that “Mr. Bowen proposes that all claims against Venezuela be paid out of the customs revenues of La Guaira and Puerto Cabello. \* \* \*” This is also stated in the first part of the agreement, signed by Mr. Bowen on January 27 last, which runs as follows:

I hereby agree that Venezuela will pay 30 per cent of the total income of the ports of La Guaira and Puerto Cabello to the nations that have claims against her, and it is distinctly understood that the said 30 per cent will be given exclusively to meet the claims mentioned in the recent ultimatums of the allied powers and the unsettled claims of other nations that existed when the said ultimatums were presented. \* \* \*

HERBERT W. BOWEN.

It was only giving way to force that Venezuela, in spite of the repeated and categorical stipulations contained in the notes exchanged on January 23 and 24, and in order to obtain the promised cessation of the blockade, was at last obliged to accept as a compromise that the protocols of February 13, signed by her with Germany, Great Britain, and Italy, should include a paragraph referring to the decision of the tribunal at The Hague the question whether or not the three blockading powers had a right to preferential or separate consideration for their claims.

6. In his opening speech at the preliminary sitting of the Tri-

bunal of Arbitration on October 1 last, His Excellency President Mouravieff, after making several most opportune and eloquent remarks as to The Hague Convention of 1899, and international arbitration in general, said:

Nevertheless I should reproach myself were I to pass over in silence the peculiarly lofty significance of the present assembly. It is in order of date the second meeting held in accordance with the provisions of the convention of July 29, 1899, but it is the first due to the assent and participation of the majority of the European powers of the Old World, in general so slow to depart from ancient practice and traditional procedure. And this fact it is that in a singular measure sets forth and emphasizes the especially exceptional importance of our arbitral mission, that to-day for the first time that mission appears in its sublimest conception, in its highest application—that of checking and curbing the sanguinary calamities of war. Let us never forget that the cannon, already rumbling on the coasts of a small distant land, was replaced by the pacific methods of the jurist, and that violence fell back and bowed—may she do so always—before the face of justice.

Now, therefore, if, as these eloquent words affirm, the permanent court at The Hague and the peaceful methods of international arbitration were created precisely to avoid and stem the bloody consequences of any act of war or arms, is it not strange that three great powers should appear before this high tribunal with the pretension that it should recognize in their favor a better right to the payment of their claims against the nation attacked by them than the nonbelligerent States, which also have claims against that country, merely as a consequence of a deed of war and violence?

Should the tribunal give sentence in favor of the British, German, and Italian pretensions, would it not thus sanction the violent act of those three powers and run directly counter to the high and noble ends of the international agreement of July 29, 1899, which is the very foundation and origin of the tribunal itself? Moreover, if the ruling of the tribunal were to favor the three blockading powers, would not such a decision implicitly proclaim a right of preference as emanating from acts of war superior to that begotten by acts of peace? Would not this afford a footing and a motive to other nations, having in the future claims or complaints against another state, for taking preliminary material measures of coercion with the object of afterwards appearing before a tribunal of arbitration and adducing precisely this act of material coercion as the strongest and most favorable ground for their pretensions to a right of preferential treatment over other states which had omitted to effect similar hostile acts? It is, no doubt, most satisfactory to think that the echoes of artillery died away on the coasts of a small and distant land as violence gave place to the peaceful methods of the jurist, but it is still more gratifying that other states did not make their cannon roar, but put their trust from the first in the peaceful decisions of justice.

By this we do not mean to say that conciliatory and friendly methods create preferential rights over aggressive and violent means, but that, whatsoever the methods used by different powers, all nations are equal and that their claims have a right to complete equality of treatment. His Catholic Majesty's Government confides, therefore, that the high tribunal of arbitration will pronounce its sentence in harmony with the fundamental principles of international law.

In view of the considerations set forth above His Catholic Majesty's Government begs that it may please the tribunal:

1. To decide in the negative the question whether or not Germany, Great Britain, and Italy are entitled to preferential or separate treatment in their claims against Venezuela; and

2. To decide how the Venezuelan revenues mentioned in Article I of said protocols shall be distributed among all creditor powers so that no powers shall obtain preferential treatment.

Respectfully submitted to the tribunal by

MARQUIS OF VILLASINDA,  
*Spanish Delegate.*

## CASE OF SWEDEN AND NORWAY.

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In the case submitted for final decision to the tribunal at The Hague in virtue of the three protocols signed at Washington on May 7, 1903, by Venezuela on one side and Germany, Great Britain, and Italy, respectively, on the other side, and the adhesion given thereto by Sweden and Norway, the agent of Sweden and Norway requests that it may please the tribunal:

1. To decide in the negative the question whether or not Germany, Great Britain, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela; and

2. To decide that in the distribution among the creditor powers of the 30 per cent mentioned in the three protocols of May 7, 1903, the claims of Sweden and Norway shall be treated on a footing of equality with the claims of the other interested powers "so that" (as it is said in the protocols) "no power shall obtain preferential treatment."

Respectfully submitted.

WECKHERLIN,  
*Agent of Sweden and Norway.*

THE HAGUE, *October 12, 1903.*

### BRIEF TO ACCOMPANY THE ABOVE PETITION.

1. Existing international law does not recognize the privileged treatment now claimed by Germany, Great Britain, and Italy.

2. There does not seem to exist even one single precedent for the claim.

3. On the contrary, what happened not long ago, at Peking, in the case of the indemnity paid "en bloc" by China to some European powers and to the United States of America, disproves the pretension.

4. The analogy with the principles of civil law, as laid down in the codes of civilized nations, is also contrary to the pretension.

5. Moreover, the negotiations which have led to the present arbitration do not support the claim to a preferential treatment in favor of any power whatsoever. About January 20 last, Mr. Bowen reached Washington with full powers of the Venezuelan Government to negotiate simultaneously with all the interested parties on a footing of equality. It has not been proved that Mr. Bowen deviated from these instructions.

WECKHERLIN,  
*Agent of Sweden and Norway.*

THE HAGUE, *October 12, 1903.*



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PART VII.

Counter Cases of Venezuela, Great Britain,  
Germany, Italy, Belgium, France,  
Spain, the Netherlands,  
and Sweden and  
Norway.





## COUNTER CASE OF VENEZUELA.

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### PRELIMINARY OBSERVATIONS.

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The only credentials that were ever exhibited by the plenipotentiary of Venezuela to the representatives of the blockading powers at Washington were these:

The Venezuelan Government grants full powers to Mr. Herbert W. Bowen to effect at Washington with the diplomatic representatives of the nations that have claims against Venezuela the immediate settlement of them, or the preliminaries for the submission to arbitration of such of them as can not be settled immediately.

CARACAS, *January 7, 1903.*

The Constitutional President,  
CIPRIANO CASTRO.

[SEAL.]

Countersigned:

The Minister of the Interior and Acting  
Minister for Foreign Affairs,  
R. LÓPEZ BARALT.

[SEAL.]

Those credentials were accepted without any reservations or objections by the representatives of the blockading powers at Washington, January 20, 1903, and on the following day they were exhibited to the representatives of the peace powers at Washington and were accepted by them also without any reservations or objections.

All the creditor nations were then duly informed that they should enjoy equality of treatment. It is apparent, therefore, that none of the creditor nations could thereafter justly claim preferential treatment.

### ANSWER TO GERMANY'S BRIEF.

Venezuela admitted in principle the justice of the German claims, because in no other way could she hope to get the blockade raised. She was in distress and acted under duress.

Her reason for not satisfying at once such German claims as might be found to be just was that she was engaged in suppressing a serious rebellion. As Germany did not consider that reason satisfactory, it is evident she would not have considered any reason satisfactory.

It is true that Venezuela was intent on delaying the payment of any money to her foreign creditors until she should have reestablished peace within her territory. Self-preservation was more important to her than settling foreign claims, and she expected Germany to be the

first to recognize that fact, for no other nation takes such constant and conspicuous precautions as Germany does to insure her self-preservation. As Germany, however, was obdurate and instituted a blockade, she was obliged to decide to pay her foreign debts. She therefore proposed that she would set aside 30 per cent of the revenues of the ports of La Guaira and Puerto Cabello for the payment of all the just claims that her creditors held against her. That arrangement was accepted as satisfactory by Germany and her allies and by all the other creditor nations, which, for the sake of convenience, are called the "peace powers." Separate or preferential treatment was never promised by Venezuela to any of her creditors. On the contrary, she insisted from the very beginning that they should all be put on a footing of absolute equality. The claim for separate or preferential treatment was made only after Venezuela had understood that the negotiations had ended and that nothing remained to be done except to reduce the agreements to writing in the form of a protocol. (See Correspondence of January 23 and 24, Venezuela's appendix.) The claim was, consequently, regarded as entirely new, vexatious, and inadmissible, and was rejected. As, however, the allied powers would not consent to raise the blockade until an agreement was made to accord further consideration to this new claim, Venezuela suggested that it should be submitted for decision to The Hague Tribunal. Finally the allied powers accepted that suggestion, and thereupon the blockade was raised.

The case being now before this tribunal, Germany formally claims that she and her allies are entitled to separate or preferential treatment; in other words, she requests this tribunal to invalidate the agreements which were made by Venezuela with herself and her allies and with the peace powers. If Germany ever had the right to demand separate or preferential treatment, she forfeited it the moment her accredited diplomatic representative in Washington accepted the credentials of the plenipotentiary of Venezuela authorizing him to settle the claims of all the creditor nations—that is to say, of the allied powers and peace powers alike—and she renounced it when her conditions were made and accepted January 24, 1903. The principal excuse for now demanding more than she was at first willing to accept is that her hostile attitude toward Venezuela will affect adversely for some years her relations with that power. In answer to that excuse, it need only be said that she has no one to blame but herself. If she had chosen to be friendly, she could have counted on the friendliness of Venezuela; but as she preferred to be hostile she should not now complain if her enmity is remembered, and if—to quote one of her own aphorisms—she must reap what she sowed. As a matter of fact, however, her apprehensions are not well founded; Venezuela is not vindictive, and she entertains for Germany, at the present moment,

a true friendship, and for German immigrants a very high and flattering regard.

Another excuse is that she endangered her men-of-war and crews. That assertion, if true, might possibly be deemed worthy of consideration; but as a matter of fact, her men-of-war and crews never—not even during the bombardment of the fort at Maracaibo—came within range of Venezuelan guns. They did damage, but they were never in any danger.

Germany's third excuse for demanding preferential treatment is that Venezuela ought to refund the expenses of the German blockade. That demand was made April 2, 1903, more than a month before the Hague protocol was signed, and it was rejected on the ground that it constituted a new claim. That argument was considered by the allied powers so sound at the time that they never again urged that the claim for blockade expenses ought to be submitted to this tribunal. If anyone has the right to claim compensation for the blockade it can only be Venezuela, but she, although her ships were seized and her forts bombarded, demands nothing except equality of treatment for all of her creditors.

Germany's final excuse is that the hostile acts of the allied powers benefited the peace powers. Venezuela's answer to that excuse is that the allied powers were benefited by the attitude of the peace powers. If they had taken sides—some with the allied powers and others with Venezuela—in order to protect their interests, political and commercial, the war would have been infinitely more expensive than it was. To avoid such a general war as that the allied powers without doubt would have been more than willing to abandon their claim to preferential treatment. The attitude of the peace powers was, therefore, more beneficial to the allied powers than the hostile acts of the allied powers were to the peace powers. Venezuela was not slow to recognize and to appreciate the favor done by the peace powers not only to the allied powers but also to herself in not taking sides and thereby adding to the horrors of the war, and out of pure gratitude alone she could now most justly ask the tribunal not to accord any preferential treatment to the allied powers, but to treat all of her creditors with equal consideration. Germany, on the other hand, ignores the favor she received at the hands of the peace powers, and her only standard in this case is the gold standard. There is a higher standard than the gold standard, and Venezuela believes this tribunal will keep that higher standard constantly in mind.

#### ANSWER TO GREAT BRITAIN'S BRIEF.

Great Britain offers five reasons for demanding preferential treatment.

Her first reason is that she insisted from the first to last that ade-

quate security should be provided. As a matter of fact that demand was made only at first, and it was accepted immediately. She never found it insufficient, not only when she finally demanded preferential treatment. She can not claim it is inadequate now, for she accepted it in her protocols.

Her second and third reasons are that the peace powers took no part in the controversy, and, consequently, should not take any part in the settlement, nor share in the results. Those reasons have been sufficiently answered in the foregoing reply to Germany's brief; but it may be added that the war instituted by Great Britain and her allies against Venezuela was not the kind of war in which the peace powers felt they could either rightly or righteously participate, as it was a war for the collection of claims that had not been examined by any court or commission. Such a war as that could not, they insisted, derogate from their rights to equality of treatment, nor prevent them from settling their claims at the earliest possible moment by the methods of diplomacy.

Her fourth reason is that no security would have been obtained had not the allied powers instituted a war against Venezuela. That reason is a simple assertion, submitted without proof, and ignoring even her own success in settling claims against Venezuela by diplomacy. It is the rule for nations to collect claims by diplomacy, and it is only the exception when they undertake to collect them by force. Great Britain and her allies made this case the exception. The peace powers saw no reason to regard it as a case that would justify them in departing from the rule. That they were wrong must be proved to this tribunal by something more convincing than a simple assertion.

Her fifth and last reason is vaguely comprehensive and incomprehensively vague. She claims that preferential treatment should be given to the allied powers because of the circumstances that existed at the time the protocols were signed. What these circumstances were she does not state; but whatever they were Venezuela maintains that they particularly and especially disqualify Great Britain and her allies from claiming preferential treatment.

#### ANSWER TO ITALY'S BRIEF.

Italy's main argument in support of her contention that the allied powers are entitled to preferential treatment is based on the entirely erroneous assertion that the 30 per cent of the customs revenues of La Guaira and Puerto Cabello were exclusively assigned to the allied powers. The representatives of the allied powers in Washington as well as those of the peace powers were informed at the very beginning of the negotiations that the said 30 per cent would be set aside for the benefit of all the creditor nations. An attempt was made by the

allied powers to induce Venezuela to set aside a certain part of the 30 per cent exclusively for them, and that attempt proves conclusively that the allied powers understood clearly that they had no right to claim the entire 30 per cent for themselves (see letter February 2, 1903, Venezuela's appendix). It is equally useless for Italy now to assert that the fact that the 30 per cent have been deposited with the agent of the Bank of England in Caracas proves Venezuela intended to give them exclusively to the allied powers. The simple truth is that the agent of the Bank of England was made the trustee for all the creditor nations pending the decision of this tribunal as to how and to whom the said revenues should be paid. (See Art. V, Italian protocol of February 13, 1903, and annexed explanations of February 14, 1903, and Art. I, Italian protocol of May 7, 1903.)

The other arguments advanced by Italy are substantially the same as those which Germany and Great Britain have presented in their briefs and which have been met in Venezuela's answers to them.

The only remaining point in Italy's case that should be answerable is her subtle insinuation that the plenipotentiary of Venezuela was not duly authorized to arrange the claims of the peace nations. Even the most cursory examination of the credentials of Venezuela's plenipotentiary would have shown that he was authorized to settle the claims of all of Venezuela's creditors. Those credentials were examined carefully and accepted without question by the Italian ambassador in Washington. If, therefore, any explanation were needed, it would seem that it should be obtained from him, but none is needed; the credentials speak for themselves.

Furthermore, the protocol for the settlement of the claims of the United States against Venezuela bears the signature of the said plenipotentiary of Venezuela, and he certainly would not have been permitted to negotiate that agreement with the honorable the Secretary of State of the United States if he had not been duly authorized to do so.

Just what Italy means by this final note of warning it is difficult to imagine:

It is also necessary to remember that Mr. Bowen was the diplomatic representative of the United States at Caracas, and that he is an American citizen.

Perhaps it refers to the fact that when the diplomatic representatives of the allied powers left Caracas, he was called upon to take charge of the interests of the allied powers in Venezuela, and to protect their subjects there. If he could perform those duties for the allied powers, certainly he could represent Venezuela in the settlement of her troubles also. At all events, he is not unwilling to be remembered as the diplomatic representative of the United States at Caracas and as an American citizen.



## CONCLUSION.

In view of all the arguments presented to the tribunal by Venezuela and by the peace powers, the tribunal is respectfully requested to decide:

1. That the allied powers are not entitled to preferential or separate treatment.
2. That all the creditor nations who are parties to this arbitration shall share each month the 30 per cent of the revenues of the ports of La Guaira and Puerto Cabello, proportionately to the total amount of their respective claims, until the said total amount shall have been paid, the last payment thus having to be made on the same date to each of the said creditor nations.
3. That the total amounts fixed by the commissions at Caracas that have examined the claims of the said creditor nations shall be accepted as the total amount due to the said creditor nations.
4. That the proportion of the said 30 per cent of the revenues of the said ports due to each claimant nation shall be paid monthly, on the same day to the diplomatic representative at Caracas of each claimant nation, for distribution among her citizens or subjects in accordance with her instructions to her said diplomatic representative.
5. That Venezuela shall be responsible only for the payment of the said 30 per cent to the said diplomatic representatives, and shall not be in any way responsible for the distribution thereof among their said citizens or subjects.
6. That the customs receipts paid to the representatives of the Bank of England at Caracas in conformity with Article V of the British protocol of February 13, 1903, shall be paid at once in the manner aforesaid; that is, in proportional shares to the said diplomatic representatives of the said creditor nations.
7. That the said representatives of the Bank of England at Caracas shall also pay, in the manner aforesaid, and to the diplomatic representatives aforesaid, whatever rate of interest they may have obtained in using the moneys that have been paid to them as aforesaid.
8. That Venezuela shall not be required to pay any part of the cost of this arbitration, inasmuch as she will not derive any pecuniary benefit therefrom.
9. Furthermore the tribunal is respectfully requested to add any other requirements in its decision that will secure equality of treatment from Venezuela for all of her said creditor nations.

HERBERT W. BOWEN,  
*Of Counsel for Venezuela.*

## COUNTER CASE OF GREAT BRITAIN IN REPLY TO THE CASE OF VENEZUELA AND THE UNITED STATES.

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In the case already presented on behalf of His Majesty's Government there will be found a brief statement of the facts which are material to the question submitted for the decision of this tribunal, and of the reasons which, as is contended, establish that the claim of the other creditor powers to share *pari passu* in the security obtained from Venezuela by the action of the blockading powers can not be supported on any principle known to the law of nations.

It is not desired in any way to modify the statement or arguments submitted in that case, but the nature of the contentions put forward before the court on behalf of Venezuela makes it necessary for His Majesty's Government, to some extent, to supplement their former statement of facts, in addition to presenting a criticism of those contentions in so far as they are pertinent to the question at issue.

### INTRODUCTORY.

1. It is to be observed that Venezuela has herself no direct interest in the present proceedings. She has made an assignment for the benefit of her creditors, and it matters not to her whether the payment of the claims of the other creditor powers be deferred till the claims of the blockading powers are satisfied or whether all the claims rank *pari passu*.

The Government of the United States of America, one of the "other creditor powers," have, however, notified their adhesion to the Venezuelan case, and are represented in the present proceedings by the counsel who appear for Venezuela. The Venezuelan case, therefore, and the arguments presented by Mr. MacVeagh in his speech to this tribunal must be taken to embody the contentions of the United States of America as well as those of Venezuela, subject to the further argument which has been presented by the United States in a supplementary memorandum.

The importance of this observation will be seen when the contentions presented on behalf of Venezuela are examined, for it will be found that some, at least, of those contentions are quite as inimical to the claims of the other creditor powers as to those of the blockading powers.

2. In the view of the Venezuelan Government the question to be decided by this tribunal is one of ethics and not of law. In the speech of her leading counsel it was stated to be an ethical question to be decided broadly by the test of the justice or injustice of the war waged upon Venezuela. If there was adequate cause for declaring war, then it appears to be admitted that the blockading powers were entitled to preferential treatment, but if there was no adequate cause for war then it is said there is no case for preferential treatment. In pursuance of this contention, the argument presented on behalf of Venezuela was devoted, almost entirely, to an attempt to establish that there was no adequate cause for war, and a detailed examination was presented of the motives of the blockading powers in resorting to force, and of the grievances which Venezuela alleged against those powers, in order to prove that the action taken against Venezuela was contrary to the laws which prevail, or rather should prevail, among nations, and that therefore the blockading powers are debarred from obtaining any better treatment than the other powers.

It is submitted, with the utmost confidence, that the imputations made upon the conduct of His Majesty's Government are absolutely destitute of foundation, and that, by whatever test the matter be decided, there was adequate cause for war; that the motives of the blockading powers were thoroughly legitimate; that the alleged grievances of Venezuela against those powers are nonexistant, and that the action taken against Venezuela was in entire accordance with international law, both before and after the peace conference.

3. It is submitted, however, that all the considerations on this point elaborated in such detail in the Venezuelan case are wholly irrelevant, and that the question to be decided in this arbitration is one, not of ethics, but of law. The decision must be based on principles known to the law of nations, and not on any indeterminate standard of moral right or moral wrong. His Majesty's Government do not shrink from an investigation into the motives of their conduct, if, in the opinion of this tribunal, such an investigation is in any way pertinent to the present issues. But, for reasons which will hereinafter more fully appear, they submit that any such inquiry is entirely immaterial. The sole question to be determined by this tribunal is whether or not, in the circumstances existing at the time of the signing of the protocols, the other creditor powers had a legal right to share *pari passu* in any security which the blockading powers might obtain for themselves by their own action.

The decision of this question must, it is submitted, depend on the position of the parties at the date of the protocols of the 13th February and on the negotiations which led up to the signature of those protocols, and not on the merits or demerits of the conduct of the blockading powers, judged by some fantastic standard of ethics for

which there is admittedly no authority in the law of nations. It is because the consideration of these matters, which is indispensable for the proper adjudication of the present dispute, is almost entirely excluded in the case presented on behalf of the Venezuelan Government and in the speech of their leading counsel that it is necessary to present a statement of the material facts and of the negotiations in order of date, and to give a short summary of the previous controversy between the parties, before proceeding to discuss the contentions of His Majesty's Government and of the Venezuelan and United States Governments in detail.

#### STATEMENT OF FACTS.

(a) *British complaints and the refusal of the Venezuelan Government to discuss them.*—4. The general nature of the complaints of His Majesty's Government against Venezuela has been stated in the British case, and a summary of the instances in which the Venezuelan Government unjustifiably seized British ships and maltreated British subjects is given in the appendix to that case. It will be remembered that the justice of the British claims has been expressly admitted by Venezuela in article 1 of the protocol, and it therefore appears sufficient that the justice of the British claims has been expressly admitted by Lord Lansdowne to Mr. Haggard on the 29th July, 1902. This telegram is to be found in the British Blue Book which has been submitted to the tribunal as part of the Venezuelan appendix, and is in the following terms:

[Telegram.]

*The Marquis of Lansdowne to Mr. Haggard.*

FOREIGN OFFICE, July 29, 1902.

The liberty and property of British subjects have, in a succession of cases, been interfered with in a wholly unwarrantable manner by the Venezuelan Government. The following incidents have been the subject of serious consideration by His Majesty's Government:

The action of the gunboat *Augusto* in seizing and deporting certain British subjects in January, 1901; the seizure of John Craig's boat and property on Patos Island in the February following; the similar interference on the same occasion in the case of the *Buena Fe*, which was accompanied by violation of territory, and the cases of the vessels *Maria Teresa*, *Pastor*, *Indiana*, and *In Time*.

No satisfactory explanations have been received from the Venezuelan Government in any of these cases. The destruction of the British ship *Queen* is a still more flagrant instance of such interference.

His Majesty's Government can not tolerate a continuance of the conduct which culminated in the last-mentioned incident, and you should address a formal protest respecting it to the Venezuelan Government. You should intimate to the President and the minister for foreign affairs, in unmistakable terms, that unless His Majesty's Government receive explicit assurances that incidents of this nature shall not recur, and unless the Venezuelan Government promptly pay to the injured parties full compensation wherever satisfactory evidence has been

furnished to His Majesty's Government that such is justly due, His Majesty's Government will take such steps as may be necessary to obtain the reparation which they are entitled to demand from the Venezuelan Government in these cases, as well as for any loss to British subjects caused by the unjustifiable conduct of the acting Venezuelan consul at Trinidad, and on account of the railway claims.

The passage relating to the destruction of the *Queen* is, for some reason, omitted in the citation of this telegram in the Venezuelan case; nor is there any allusion to the seizure of the *Queen* in the detailed criticism of the British grievances which is to be found in that case, and in the speech of Mr. MacVeagh. It has already been submitted that the reasons for the action of the blockading powers are not material to the question now before this tribunal, but as the Venezuelan Government have thought it proper to devote more than one-third of their printed case to a detailed statement of these matters, it is important to mention that the seizure of the *Queen*, which occurred in June, 1902, and for which no justification or excuse is alleged, is a case of a peculiarly flagrant character. This vessel, flying the British flag while on a voyage from Grenada to Trinidad in ballast, was seized on the high seas by the Venezuelan gunboat *Restaurador*, was towed into the Venezuelan port of Porlamar, and there stripped of her sails and deprived of her papers. She was finally confiscated on a mere suspicion of having carried a cargo of arms to Venezuela, and the crew were put on shore and left destitute.

It is specially to be observed that the immediate demands of His Majesty's Government were limited to the obtaining of an assurance that acts such as these should not be repeated, and that compensation should be paid for them; but that it was intimated that if it became necessary to take action in support of these claims, His Majesty's Government would also insist on payment of certain railway claims, the nature of which is explained in a succeeding paragraph, and which had been the subject of remonstrance for many months past, as well as of the claims in respect of the improper conduct of the Venezuelan consul at Trinidad, for which there was no possible justification.

5. In accordance with the above instructions given by Lord Lansdowne, a formal protest was made to Doctor Baralt, the acting minister for foreign affairs at Caracas, by Mr. Haggard on behalf of His Majesty's Government. The reception it met with is recorded in his report, dated the 1st August, 1902, in the following passage:

I took this note in person to the acting minister for foreign affairs and carefully translated it to him word for word, at the same time explaining and enlarging on it in terms about which there could certainly not be any possible mistake. At the close of each sentence I asked his excellency if he thoroughly understood it, and satisfied myself that he did so. I pointed out to him the extreme gravity of the communication, and said that he would thoroughly under-

stand that it could only have been made after full and serious consideration, not only as to the communication itself, but as to the consequences which it involved; that, in fact, His Majesty's Government meant what they said, and that they did not use such words without fully intending to act up to them in case of need.

I therefore begged him to consider, and specially to induce the President to consider, the note very earnestly, in view particularly of the serious consequences which might be expected to follow the refusal of the Venezuelan Government to comply with the just demands of His Majesty's Government.

His excellency accepted the note quietly. His final remark was that they were used to these communications. I said that that might be the case, but not from England; that his excellency must bear in mind that we had been extraordinarily patient; that His Majesty's Government were slow in taking such a weighty decision, but that they had the power to execute it when once taken.

On the 2d August a written reply was received from Señor Baralt, in which he stated in effect that until the complaints of the Venezuelan Government in reference to the *Ban Righ* were satisfied they could not even discuss any other matters.

6. It will be noticed that the alleged grievance of the Venezuelan Government in respect of the *Ban Righ* is the reason given by Doctor Baralt in this note for his refusal to discuss the complaints of His Majesty's Government, and it will be found that the same excuse had been put forward in answer to every complaint of His Majesty's Government for some months previously. In February, 1902, Mr. Haggard had complained that the Venezuelan Government had arbitrarily taken possession of the control and equipment of the Bolivar Railway, and that, at the risk of their lives, English subjects in the service of the company had been obliged by the authorities to render service for military purposes; but General Pachano, the Venezuelan minister for foreign affairs, declined even to investigate the matter until His Majesty's Government had complied with the requests of the Venezuelan Government to seize the *Ban Righ*. The same attitude was maintained by the Venezuelan Government throughout, and they invariably refused even to take into consideration the complaints presented to them.

7. The conduct of His Majesty's Government in respect to the *Ban Righ* can not, as is submitted, be material to the present question, but in view of the importance attached to it in the Venezuelan case and in the speech of Mr. MacVeagh, it is desired to present some short statement of the facts relating to it. A fuller account is to be found in the British Blue Book.

On the 8th November, 1901, the attention of His Majesty's Government was called by the officers of customs to the fact that a vessel called the *Ban Righ* was being fitted out in the Thames in an apparently suspicious manner. It was known she was bound for the West Indies, and as there was at that time an insurrection in Venezuela, she was detained as a measure of precaution. On the 15th November, however, the Government was informed by Señor Ponce, the Colom-



bian minister in London, that the vessel was intended for the service of the Colombian Government, and after being officially informed by the minister for foreign affairs in Venezuela that no state of war existed between Colombia and Venezuela, the vessel was released on the 22d November. Indeed, it would have been impossible in these circumstances for His Majesty's Government to detain her longer.

The vessel subsequently appears to have shipped a cargo of arms at Antwerp, which had been consigned to that port from Paris, and to have sailed for the West Indies. It further appears that the sale to the Colombian Government was completed on the 1st of January at the French port of Martinique, and that her English crew were there dismissed and her British registry shortly afterwards closed. Her movements after that time are uncertain, but on the 23d March, 1902, she entered the harbor of Port of Spain, under the name of the *Bolivar*, flying the man-of-war's flag of the Colombian Republic, with a commission in due form from that Government. It would have been wholly unjustifiable for His Majesty's Government to arrest the public vessel of a friendly power, even if the complaints of Venezuela had proved, on investigation, to be well founded. Indeed, any such action would have constituted an act of war against Colombia. But from a desire to satisfy Venezuela they went as far as they could go without resort to force and requested the *Ban Righ* to leave the port at once.

The instructions from Lord Lansdowne to Mr. Haggard were in the following terms:

[Telegram.]

*The Marquis of Lansdowne to Mr. Haggard.*

FOREIGN OFFICE, March 26, 1902.

As the *Bolivar* is stated to be now flying the Colombian national flag, and, ostensibly at least, is a man-of-war of that State, His Majesty's Government are not in a position properly to take any action against her. It would be an act of war against Colombia to do so if she is a Colombian public vessel.

His Majesty's Government are under no liability for any depredation that she may commit, nor can Venezuela properly put forward any charge of negligence in view of the circumstances in which the vessel was permitted to leave this country. If the British flag has been used since the transfer effected at Martinique it was a wrongful act, no responsibility for which attaches to His Majesty's Government.

The vessel will not, however, be allowed to make any British port a base of hostile operations against Venezuela, and the governor of Trinidad has consequently been instructed to refuse her permission to coal, and to request her at once to leave Port of Spain.

The substance of this telegram was communicated to the Venezuelan Government by Mr. Haggard in a note dated the 27th March, but it is to be noticed that the citation of this note in the Venezuelan

case (p. 83) is not correct. The words "notwithstanding the notorious character of the ship in question," which are there printed as if they formed part of the note, are not to be found in the copies of that note in the Venezuelan appendix or in the British Blue Book; nor do the extracts from the report of the British minister cited on page 84 fully convey the sense of that report.

The Colombian Government subsequently gave assurances that the vessel would not be used for purposes of hostility against Venezuela, and she was thereupon permitted to refit and leave for Colombian waters.

It is obvious that His Majesty's Government could not, in view of the assurances of the Colombian Government, have taken any action. If those assurances were false, the remedy of Venezuela was against Colombia, and it was beyond all reason to demand that His Majesty's Government should commit an act of war against Colombia for the benefit of Venezuela. It is also to be noticed that the *Ban Righ* was not manned by a British crew after she left Martinique, and that after she had sailed from London no addition was ever made to her crew or her warlike equipment in any British port. These facts were frequently brought to the knowledge of the Venezuelan Government, and the whole matter was explained to them on many occasions, but they declined to accept any explanation, and persisted in their demands that His Majesty's Government should arrest the *Ban Righ*, although they were not willing themselves to take any action against the Government of Colombia in respect of it.

8. Resuming now the story of the communications which passed between the parties, it will be found that on the 11th November a further remonstrance was addressed on behalf of His Majesty's Government to the Venezuelan Government in these terms:

*Mr. Haggard to Señor Baralt.*

CARACAS, November 11, 1902.

M. LE MINISTRE: I am instructed by His Majesty's Government to inform that of the Republic of Venezuela that they regret the unsatisfactory character of the reply to the representations contained in my note to your excellency of the 30th July last. They are unable to admit that the serious causes of complaint put forward can be met by a refusal to discuss them.

If such a refusal is persisted in it will become the duty of His Majesty's Government to consider what steps they should take for the protection of British interests.

They are, however, unwilling to exclude at once all possibility of proceeding with negotiations, and they are therefore ready to consider any further communication which the Government of the Republic may be prepared to make.

I avail, etc.,

W. H. D. HAGGARD.

Señor Baralt replied to this note at some length. The full text of his reply has been set out in the appendix to the British case. It will

be seen that in effect it is a mere reiteration of the refusal of the Venezuelan Government to take the matters complained of into consideration until His Majesty's Government had made compensation for the damage alleged to have been caused by the *Ban Righ*.

9. It was impossible for His Majesty's Government to acquiesce in this position, and on the 2d December Lord Lansdowne instructed Mr. Haggard to present a final remonstrance:

[Telegram.]

*The Marquis of Lansdowne to Mr. Haggard.*

FOREIGN OFFICE, December 2, 1902.

Your telegram of the 17th ultimo.

In answer to the Venezuelan note, you should address a written communication to the Venezuelan minister for foreign affairs, pointing out that, with regard to the *Ban Righ*, His Majesty's Government have given full explanations, and have shown that on this account there is no legitimate ground of complaint. Nor do they consider that there is any justification for attributing blame to the authorities at Trinidad, who only acted in accordance with instructions.

You should then state that His Majesty's Government also regret the situation which has arisen, but that they can not accept the note as in any degree a sufficient answer to your communications, or as indicating an intention on the part of the Venezuelan Government to meet the claims which His Majesty's Government have put forward, and which must be understood to include all well-founded claims which have arisen in consequence of the late civil war and previous civil wars, and of the maltreatment or false imprisonment of British subjects, and also settlement of the external debt.

You will request the Venezuelan Government to make a declaration that they recognize in principle the justice of these claims, that they will at once pay compensation in the shipping cases, and in the cases where British subjects have been falsely imprisoned or maltreated, and that as to other claims, they will be prepared to accept the decisions of a mixed commission with regard to the amount and the security for payment to be given.

You should express a hope that the Venezuelan Government will comply with these demands, and not compel His Majesty's Government to take steps to obtain satisfaction. You should add that His Majesty's Government have been informed of the claims of the German Government against Venezuela, that the two Governments have agreed to act together in order to obtain a settlement of all their claims, and that His Majesty's Government will require the immediate payment of a sum equal to that which may in the first instance be paid to the German Government. Any balance after the discharge of pressing claims will be held on account for the liquidation of the claims which will go before the commission.

You should make it quite clear that this communication must be regarded in the light of an ultimatum.

The ultimatum addressed by Mr. Haggard to Señor Baralt in pursuance of these instructions, and the reply of Señor Baralt, are set out in full in the appendix to the British case. It will be observed that the Venezuelan reply was, in effect, a refusal to accept the demands of His Majesty's Government.

(b) *Action of the blockading powers.*—10. On the 9th December

(in error stated in the British case as the 8th December) the first act of force occurred, viz, the seizure of three Venezuelan ships of war. President Castro retaliated by arresting and imprisoning all persons of British and German nationality in Caracas, but these were released the next day on the intercession of the United States minister. On the 20th December the blockade was declared, and was maintained until after the signing of the protocols. It appears from the subsequent correspondence that the blockade was of an effective character, and that Venezuela was most anxious from the first to induce the blockading powers to terminate it.

It has already been stated in the British case that the whole of the Venezuelan navy and a considerable number of trading ships were captured by the allies during the hostilities, and were in their hands at the time of the signing of the protocols.

(c) *Negotiations after the commencement of hostilities.*—11. It is now necessary to invite the attention of the tribunal to the details of the negotiations which took place between Venezuela and the blockading powers after the commencement of hostilities, because those negotiations establish beyond the possibility of doubt that the allies insisted from the first to last, as a condition precedent to raising the blockade, that Venezuela should agree to give them security adequate to insure the payment of their claims within a reasonable time; and that Venezuela accepted that condition without reserve, and agreed to provide the necessary securities out of her customs receipts.

12. These negotiations were initiated with His Majesty's Government by a communication from Mr. White, the United States chargé d'affaires in London, forwarding a proposal for arbitration from the Government of Venezuela:

*Mr. White to the Marquis of Lansdowne.*

AMERICAN EMBASSY,  
London, December 13, 1902.

MY LORD: The Government of Venezuela has requested the American minister at Caracas to communicate to the Government of His Britannic Majesty and of Germany a proposition to the effect that the present difficulty respecting the manner of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration; and I have the honor, in accordance with instructions from my Government, to communicate this proposal to your lordship.

In view of the present condition of affairs in Venezuela, I venture to hope that it may be possible for you to enable me to inform my Government, at an early date, of the decision arrived at by His Majesty's Government, with regard to the proposal in question.

I have, etc.,

HENRY WHITE.

This proposal was accepted in principle by His Majesty's Government, and Mr. White was so informed by Lord Lansdowne on the

18th December, as appears by a dispatch on that date to Sir M. Herbert:

*The Marquis of Lansdowne to Sir M. Herbert.*

FOREIGN OFFICE, *December 18, 1902.*

SIR: I informed the United States chargé d'affaires this afternoon that the cabinet had decided at its last meeting on the 16th to accept in principle the idea of settling the Venezuelan dispute by arbitration, and we had since ascertained that the view of the German Government was in accord with our own. We considered, however, that some of our claims were of such a kind that we could not include them in the reference. I said that I could not give him at that moment a precise description of the excluded claims, but that I should be able to do so shortly. I was authorized to say that it would be extremely agreeable to His Majesty's Government if the President of the United States would consent to act as arbitrator.

It was satisfactory to me to find that both Governments had come to a conclusion which, judging from the communication which he had made to me last night, was likely to be received with satisfaction by the United States Government.

I added that we did not propose for the present to desist from the measures of coercion now in progress.

I am, etc.,

LANSDOWNE.

On the same day, however, Mr. Bowen, the American minister at Caracas, was formally authorized by the President of Venezuela to act on behalf of that country and to negotiate with the three blockading powers with a view of arriving at a direct settlement of the questions in dispute. This authority was conferred in the following terms and it will be observed that it is restricted to the claims of the blockading powers:

The Venezuelan Government confers on Mr. Herbert W. Bowen full powers to enter into negotiations to settle, in the most favorable manner possible to the interests of the Republic, the present difficulty which has arisen with the United Kingdom of Great Britain, the German Empire, and the Kingdom of Italy.

In witness whereof these presents are issued in Caracas, the 18th December, 1902.

CIPRIANO CASTRO,  
*Constitutional President.*

Countersigned:

LÓPEZ BARALT,  
*Minister for Foreign Affairs.*

The fact that Mr. Bowen had been authorized to effect a direct settlement was communicated to Lord Lansdowne by Mr. White on the 19th December, and his lordship replied on the same day as follows:

*The Marquis of Lansdowne to Mr. White.*

FOREIGN OFFICE, *December 19, 1902.*

SIR: I have had the honor to receive your note of to-day's date informing me that Mr. Bowen, the American minister at Caracas, had informed the United

States Government that the Venezuelan Government had conferred upon him full powers to enter into negotiations on the part of Venezuela to settle the present difficulties with Great Britain, Germany, and Italy.

His Majesty's Government have, as you are aware, already accepted the proposal of the Venezuelan Government to refer to arbitration the matters in controversy between the two Governments, and have expressed the hope that the President of the United States will consent to act as arbitrator. The conditions under which such arbitration might take place have been fully considered and I hope very shortly to make you aware of them.

In these circumstances His Majesty's Government prefer not to abandon the proposals which they have already made, proposals which seem to them to afford every hope of a satisfactory settlement, in order to adopt the alternative procedure which the Venezuelan Government have apparently now suggested.

I have, etc.,

LANSDOWNE.

It is clear, therefore, that at this time His Majesty's Government preferred to adhere to the proposal to refer the matters in controversy to arbitration rather than to enter into negotiations with Mr. Bowen for a direct settlement. But Mr. Bowen himself took a different view, and insisted on attempting to settle the dispute by negotiation. This appears from the telegram of the 20th December, which is set out below. Mr. Bowen may have good reasons for his decision, but his attitude at this time is hardly consistent with the complaints insisted on so vigorously by the Venezuelan counsel before this tribunal that His Majesty's Government would not submit their claims to the judgment of The Hague Court:

[Telegraphic.]

*Mr. Bowen to Mr. Hay.*

P.]

CARACAS, December 20, 1902.

Mr. Bowen states that arbitration at The Hague is objectionable because very slow and expensive, and, in the present case, prejudicial to the interests of the Venezuelan Government, which wishes its war vessels returned at once, and the control of its rivers and ports so as to prevent arms and ammunition from being imported by the revolutionists, who are so numerous that if they receive a good supply of arms and ammunition will make the reestablishment of peace more difficult. Mr. Bowen believes that Venezuela would be satisfied to pay a good sum in cash at once to the three powers, and would agree that a mixed commission should settle the amounts to be paid on claims, and that Venezuela would furnish ample guaranty that payment of such amounts will be promptly paid. Mr. Bowen states that, in the exercise of the full powers given to him, he may decide that in the interests of Venezuela it is better to accept at once, and in full, the ultimatum of the three powers than to leave the matter to the tribunal at The Hague. He states that, of course, he prefers a modification of the ultimatums, if possible, concerning amounts of cash payments. He asks, if Hague arbitration is desired, what favorable proposition can be made to Venezuela by the powers? If they would release war ships immediately after and stop blockade? He adds that he is bound to act in the interests of Venezuela.

This declaration is important also in another respect, because it demonstrates that Venezuela was willing at that time to furnish an



2. In the view of the Venezuelan Government the question to be decided by this tribunal is one of ethics and not of law. In the speech of her leading counsel it was stated to be an ethical question to be decided broadly by the test of the justice or injustice of the war waged upon Venezuela. If there was adequate cause for declaring war, then it appears to be admitted that the blockading powers were entitled to preferential treatment, but if there was no adequate cause for war then it is said there is no case for preferential treatment. In pursuance of this contention, the argument presented on behalf of Venezuela was devoted, almost entirely, to an attempt to establish that there was no adequate cause for war, and a detailed examination was presented of the motives of the blockading powers in resorting to force, and of the grievances which Venezuela alleged against those powers, in order to prove that the action taken against Venezuela was contrary to the laws which prevail, or rather should prevail, among nations, and that therefore the blockading powers are debarred from obtaining any better treatment than the other powers.

It is submitted, with the utmost confidence, that the imputations made upon the conduct of His Majesty's Government are absolutely destitute of foundation, and that, by whatever test the matter be decided, there was adequate cause for war; that the motives of the blockading powers were thoroughly legitimate; that the alleged grievances of Venezuela against those powers are nonexistent, and that the action taken against Venezuela was in entire accordance with international law, both before and after the peace conference.

3. It is submitted, however, that all the considerations on this point elaborated in such detail in the Venezuelan case are wholly irrelevant, and that the question to be decided in this arbitration is one, not of ethics, but of law. The decision must be based on principles known to the law of nations, and not on any indeterminate standard of moral right or moral wrong. His Majesty's Government do not shrink from an investigation into the motives of their conduct, if, in the opinion of this tribunal, such an investigation is in any way pertinent to the present issues. But, for reasons which will hereinafter more fully appear, they submit that any such inquiry is entirely immaterial. The sole question to be determined by this tribunal is whether or not, in the circumstances existing at the time of the signing of the protocols, the other creditor powers had a legal right to share *pari passu* in any security which the blockading powers might obtain for themselves by their own action.

The decision of this question must, it is submitted, depend on the position of the parties at the date of the protocols of the 13th February and on the negotiations which led up to the signature of those protocols, and not on the merits or demerits of the conduct of the blockading powers, judged by some fantastic standard of ethics for

which there is admittedly no authority in the law of nations. It is because the consideration of these matters, which is indispensable for the proper adjudication of the present dispute, is almost entirely excluded in the case presented on behalf of the Venezuelan Government and in the speech of their leading counsel that it is necessary to present a statement of the material facts and of the negotiations in order of date, and to give a short summary of the previous controversy between the parties, before proceeding to discuss the contentions of His Majesty's Government and of the Venezuelan and United States Governments in detail.

### STATEMENT OF FACTS.

(a) *British complaints and the refusal of the Venezuelan Government to discuss them.*—4. The general nature of the complaints of His Majesty's Government against Venezuela has been stated in the British case, and a summary of the instances in which the Venezuelan Government unjustifiably seized British ships and maltreated British subjects is given in the appendix to that case. It will be remembered that the justice of the British claims has been expressly admitted by Venezuela in article 1 of the protocol, and it therefore appears sufficient that the justice of the British claims has been expressly admitted by Lord Lansdowne to Mr. Haggard on the 29th July, 1902. This telegram is to be found in the British Blue Book which has been submitted to the tribunal as part of the Venezuelan appendix, and is in the following terms:

[Telegram.]

*The Marquis of Lansdowne to Mr. Haggard.*

FOREIGN OFFICE, July 29, 1902.

The liberty and property of British subjects have, in a succession of cases, been interfered with in a wholly unwarrantable manner by the Venezuelan Government. The following incidents have been the subject of serious consideration by His Majesty's Government:

The action of the gunboat *Augusto* in seizing and deporting certain British subjects in January, 1901; the seizure of John Craig's boat and property on Patos Island in the February following; the similar interference on the same occasion in the case of the *Buena Fe*, which was accompanied by violation of territory, and the cases of the vessels *Maria Teresa*, *Pastor*, *Indiana*, and *In Time*.

No satisfactory explanations have been received from the Venezuelan Government in any of these cases. The destruction of the British ship *Queen* is a still more flagrant instance of such interference.

His Majesty's Government can not tolerate a continuance of the conduct which culminated in the last-mentioned incident, and you should address a formal protest respecting it to the Venezuelan Government. You should intimate to the President and the minister for foreign affairs, in unmistakable terms, that unless His Majesty's Government receive explicit assurances that incidents of this nature shall not recur, and unless the Venezuelan Government promptly pay to the injured parties full compensation wherever satisfactory evidence has been

furnished to His Majesty's Government that such is justly due, His Majesty's Government will take such steps as may be necessary to obtain the reparation which they are entitled to demand from the Venezuelan Government in these cases, as well as for any loss to British subjects caused by the unjustifiable conduct of the acting Venezuelan consul at Trinidad, and on account of the railway claims.

The passage relating to the destruction of the *Queen* is, for some reason, omitted in the citation of this telegram in the Venezuelan case; nor is there any allusion to the seizure of the *Queen* in the detailed criticism of the British grievances which is to be found in that case, and in the speech of Mr. MacVeagh. It has already been submitted that the reasons for the action of the blockading powers are not material to the question now before this tribunal, but as the Venezuelan Government have thought it proper to devote more than one-third of their printed case to a detailed statement of these matters, it is important to mention that the seizure of the *Queen*, which occurred in June, 1902, and for which no justification or excuse is alleged, is a case of a peculiarly flagrant character. This vessel, flying the British flag while on a voyage from Grenada to Trinidad in ballast, was seized on the high seas by the Venezuelan gunboat *Restaurador*, was towed into the Venezuelan port of Porlamar, and there stripped of her sails and deprived of her papers. She was finally confiscated on a mere suspicion of having carried a cargo of arms to Venezuela, and the crew were put on shore and left destitute.

It is specially to be observed that the immediate demands of His Majesty's Government were limited to the obtaining of an assurance that acts such as these should not be repeated, and that compensation should be paid for them; but that it was intimated that if it became necessary to take action in support of these claims, His Majesty's Government would also insist on payment of certain railway claims, the nature of which is explained in a succeeding paragraph, and which had been the subject of remonstrance for many months past, as well as of the claims in respect of the improper conduct of the Venezuelan consul at Trinidad, for which there was no possible justification.

5. In accordance with the above instructions given by Lord Lansdowne, a formal protest was made to Doctor Baralt, the acting minister for foreign affairs at Caracas, by Mr. Haggard on behalf of His Majesty's Government. The reception it met with is recorded in his report, dated the 1st August, 1902, in the following passage:

I took this note in person to the acting minister for foreign affairs and carefully translated it to him word for word, at the same time explaining and enlarging on it in terms about which there could certainly not be any possible mistake. At the close of each sentence I asked his excellency if he thoroughly understood it, and satisfied myself that he did so. I pointed out to him the extreme gravity of the communication, and said that he would thoroughly under-

stand that it could only have been made after full and serious consideration, not only as to the communication itself, but as to the consequences which it involved; that, in fact, His Majesty's Government meant what they said, and that they did not use such words without fully intending to act up to them in case of need.

I therefore begged him to consider, and specially to induce the President to consider, the note very earnestly, in view particularly of the serious consequences which might be expected to follow the refusal of the Venezuelan Government to comply with the just demands of His Majesty's Government.

His excellency accepted the note quietly. His final remark was that they were used to these communications. I said that that might be the case, but not from England; that his excellency must bear in mind that we had been extraordinarily patient; that His Majesty's Government were slow in taking such a weighty decision, but that they had the power to execute it when once taken.

On the 2d August a written reply was received from Señor Baralt, in which he stated in effect that until the complaints of the Venezuelan Government in reference to the *Ban Righ* were satisfied they could not even discuss any other matters.

6. It will be noticed that the alleged grievance of the Venezuelan Government in respect of the *Ban Righ* is the reason given by Doctor Baralt in this note for his refusal to discuss the complaints of His Majesty's Government, and it will be found that the same excuse had been put forward in answer to every complaint of His Majesty's Government for some months previously. In February, 1902, Mr. Haggard had complained that the Venezuelan Government had arbitrarily taken possession of the control and equipment of the Bolivar Railway, and that, at the risk of their lives, English subjects in the service of the company had been obliged by the authorities to render service for military purposes; but General Pachano, the Venezuelan minister for foreign affairs, declined even to investigate the matter until His Majesty's Government had complied with the requests of the Venezuelan Government to seize the *Ban Righ*. The same attitude was maintained by the Venezuelan Government throughout, and they invariably refused even to take into consideration the complaints presented to them.

7. The conduct of His Majesty's Government in respect to the *Ban Righ* can not, as is submitted, be material to the present question, but in view of the importance attached to it in the Venezuelan case and in the speech of Mr. MacVeagh, it is desired to present some short statement of the facts relating to it. A fuller account is to be found in the British Blue Book.

On the 8th November, 1901, the attention of His Majesty's Government was called by the officers of customs to the fact that a vessel called the *Ban Righ* was being fitted out in the Thames in an apparently suspicious manner. It was known she was bound for the West Indies, and as there was at that time an insurrection in Venezuela, she was detained as a measure of precaution. On the 15th November, however, the Government was informed by Señor Ponce, the Colom-

bian minister in London, that the vessel was intended for the service of the Colombian Government, and after being officially informed by the minister for foreign affairs in Venezuela that no state of war existed between Colombia and Venezuela, the vessel was released on the 22d November. Indeed, it would have been impossible in these circumstances for His Majesty's Government to detain her longer.

The vessel subsequently appears to have shipped a cargo of arms at Antwerp, which had been consigned to that port from Paris, and to have sailed for the West Indies. It further appears that the sale to the Colombian Government was completed on the 1st of January at the French port of Martinique, and that her English crew were there dismissed and her British registry shortly afterwards closed. Her movements after that time are uncertain, but on the 23d March, 1902, she entered the harbor of Port of Spain, under the name of the *Bolivar*, flying the man-of-war's flag of the Colombian Republic, with a commission in due form from that Government. It would have been wholly unjustifiable for His Majesty's Government to arrest the public vessel of a friendly power, even if the complaints of Venezuela had proved, on investigation, to be well founded. Indeed, any such action would have constituted an act of war against Colombia. But from a desire to satisfy Venezuela they went as far as they could go without resort to force and requested the *Ban Righ* to leave the port at once.

The instructions from Lord Lansdowne to Mr. Haggard were in the following terms:

[Telegram.]

*The Marquis of Lansdowne to Mr. Haggard.*

FOREIGN OFFICE, March 26, 1902.

As the *Bolivar* is stated to be now flying the Colombian national flag, and, ostensibly at least, is a man-of-war of that State, His Majesty's Government are not in a position properly to take any action against her. It would be an act of war against Colombia to do so if she is a Colombian public vessel.

His Majesty's Government are under no liability for any depredation that she may commit, nor can Venezuela properly put forward any charge of negligence in view of the circumstances in which the vessel was permitted to leave this country. If the British flag has been used since the transfer effected at Martinique it was a wrongful act, no responsibility for which attaches to His Majesty's Government.

The vessel will not, however, be allowed to make any British port a base of hostile operations against Venezuela, and the governor of Trinidad has consequently been instructed to refuse her permission to coal, and to request her at once to leave Port of Spain.

The substance of this telegram was communicated to the Venezuelan Government by Mr. Haggard in a note dated the 27th March, but it is to be noticed that the citation of this note in the Venezuelan



case (p. 83) is not correct. The words "notwithstanding the notorious character of the ship in question," which are there printed as if they formed part of the note, are not to be found in the copies of that note in the Venezuelan appendix or in the British Blue Book; nor do the extracts from the report of the British minister cited on page 84 fully convey the sense of that report.

The Colombian Government subsequently gave assurances that the vessel would not be used for purposes of hostility against Venezuela, and she was thereupon permitted to refit and leave for Colombian waters.

It is obvious that His Majesty's Government could not, in view of the assurances of the Colombian Government, have taken any action. If those assurances were false, the remedy of Venezuela was against Colombia, and it was beyond all reason to demand that His Majesty's Government should commit an act of war against Colombia for the benefit of Venezuela. It is also to be noticed that the *Ban Righ* was not manned by a British crew after she left Martinique, and that after she had sailed from London no addition was ever made to her crew or her warlike equipment in any British port. These facts were frequently brought to the knowledge of the Venezuelan Government, and the whole matter was explained to them on many occasions, but they declined to accept any explanation, and persisted in their demands that His Majesty's Government should arrest the *Ban Righ*, although they were not willing themselves to take any action against the Government of Colombia in respect of it.

8. Resuming now the story of the communications which passed between the parties, it will be found that on the 11th November a further remonstrance was addressed on behalf of His Majesty's Government to the Venezuelan Government in these terms:

*Mr. Haggard to Señor Baralt.*

CARACAS, November 11, 1902.

M. LE MINISTRE: I am instructed by His Majesty's Government to inform that of the Republic of Venezuela that they regret the unsatisfactory character of the reply to the representations contained in my note to your excellency of the 30th July last. They are unable to admit that the serious causes of complaint put forward can be met by a refusal to discuss them.

If such a refusal is persisted in it will become the duty of His Majesty's Government to consider what steps they should take for the protection of British interests.

They are, however, unwilling to exclude at once all possibility of proceeding with negotiations, and they are therefore ready to consider any further communication which the Government of the Republic may be prepared to make.

I avail, etc.,

W. H. D. HAGGARD.

Señor Baralt replied to this note at some length. The full text of his reply has been set out in the appendix to the British case. It will



be seen that in effect it is a mere reiteration of the refusal of the Venezuelan Government to take the matters complained of into consideration until His Majesty's Government had made compensation for the damage alleged to have been caused by the *Ban Righ*.

9. It was impossible for His Majesty's Government to acquiesce in this position, and on the 2d December Lord Lansdowne instructed Mr. Haggard to present a final remonstrance:

[Telegram.]

*The Marquis of Lansdowne to Mr. Haggard.*

FOREIGN OFFICE, December 2, 1902.

Your telegram of the 17th ultimo.

In answer to the Venezuelan note, you should address a written communication to the Venezuelan minister for foreign affairs, pointing out that, with regard to the *Ban Righ*, His Majesty's Government have given full explanations, and have shown that on this account there is no legitimate ground of complaint. Nor do they consider that there is any justification for attributing blame to the authorities at Trinidad, who only acted in accordance with instructions.

You should then state that His Majesty's Government also regret the situation which has arisen, but that they can not accept the note as in any degree a sufficient answer to your communications, or as indicating an intention on the part of the Venezuelan Government to meet the claims which His Majesty's Government have put forward, and which must be understood to include all well-founded claims which have arisen in consequence of the late civil war and previous civil wars, and of the maltreatment or false imprisonment of British subjects, and also settlement of the external debt.

You will request the Venezuelan Government to make a declaration that they recognize in principle the justice of these claims, that they will at once pay compensation in the shipping cases, and in the cases where British subjects have been falsely imprisoned or maltreated, and that as to other claims, they will be prepared to accept the decisions of a mixed commission with regard to the amount and the security for payment to be given.

You should express a hope that the Venezuelan Government will comply with these demands, and not compel His Majesty's Government to take steps to obtain satisfaction. You should add that His Majesty's Government have been informed of the claims of the German Government against Venezuela, that the two Governments have agreed to act together in order to obtain a settlement of all their claims, and that His Majesty's Government will require the immediate payment of a sum equal to that which may in the first instance be paid to the German Government. Any balance after the discharge of pressing claims will be held on account for the liquidation of the claims which will go before the commission.

You should make it quite clear that this communication must be regarded in the light of an ultimatum.

The ultimatum addressed by Mr. Haggard to Señor Baralt in pursuance of these instructions, and the reply of Señor Baralt, are set out in full in the appendix to the British case. It will be observed that the Venezuelan reply was, in effect, a refusal to accept the demands of His Majesty's Government.

(b) *Action of the blockading powers.*—10. On the 9th December

(in error stated in the British case as the 8th December) the first act of force occurred, viz, the seizure of three Venezuelan ships of war. President Castro retaliated by arresting and imprisoning all persons of British and German nationality in Caracas, but these were released the next day on the intercession of the United States minister. On the 20th December the blockade was declared, and was maintained until after the signing of the protocols. It appears from the subsequent correspondence that the blockade was of an effective character, and that Venezuela was most anxious from the first to induce the blockading powers to terminate it.

It has already been stated in the British case that the whole of the Venezuelan navy and a considerable number of trading ships were captured by the allies during the hostilities, and were in their hands at the time of the signing of the protocols.

(c) *Negotiations after the commencement of hostilities.*—11. It is now necessary to invite the attention of the tribunal to the details of the negotiations which took place between Venezuela and the blockading powers after the commencement of hostilities, because those negotiations establish beyond the possibility of doubt that the allies insisted from the first to last, as a condition precedent to raising the blockade, that Venezuela should agree to give them security adequate to insure the payment of their claims within a reasonable time; and that Venezuela accepted that condition without reserve, and agreed to provide the necessary securities out of her customs receipts.

12. These negotiations were initiated with His Majesty's Government by a communication from Mr. White, the United States chargé d'affaires in London, forwarding a proposal for arbitration from the Government of Venezuela:

*Mr. White to the Marquis of Lansdowne.*

AMERICAN EMBASSY,  
London, December 13, 1902.

MY LORD: The Government of Venezuela has requested the American minister at Caracas to communicate to the Government of His Britannic Majesty and of Germany a proposition to the effect that the present difficulty respecting the manner of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration; and I have the honor, in accordance with instructions from my Government, to communicate this proposal to your lordship.

In view of the present condition of affairs in Venezuela, I venture to hope that it may be possible for you to enable me to inform my Government, at an early date, of the decision arrived at by His Majesty's Government, with regard to the proposal in question.

I have, etc.,

HENRY WHITE.

This proposal was accepted in principle by His Majesty's Government, and Mr. White was so informed by Lord Lansdowne on the

18th December, as appears by a dispatch on that date to Sir M. Herbert:

*The Marquis of Lansdowne to Sir M. Herbert.*

FOREIGN OFFICE, December 18, 1902.

SIR: I informed the United States chargé d'affaires this afternoon that the cabinet had decided at its last meeting on the 16th to accept in principle the idea of settling the Venezuelan dispute by arbitration, and we had since ascertained that the view of the German Government was in accord with our own. We considered, however, that some of our claims were of such a kind that we could not include them in the reference. I said that I could not give him at that moment a precise description of the excluded claims, but that I should be able to do so shortly. I was authorized to say that it would be extremely agreeable to His Majesty's Government if the President of the United States would consent to act as arbitrator.

It was satisfactory to me to find that both Governments had come to a conclusion which, judging from the communication which he had made to me last night, was likely to be received with satisfaction by the United States Government.

I added that we did not propose for the present to desist from the measures of coercion now in progress.

I am, etc.,

LANSDOWNE.

On the same day, however, Mr. Bowen, the American minister at Caracas, was formally authorized by the President of Venezuela to act on behalf of that country and to negotiate with the three blockading powers with a view of arriving at a direct settlement of the questions in dispute. This authority was conferred in the following terms and it will be observed that it is restricted to the claims of the blockading powers:

The Venezuelan Government confers on Mr. Herbert W. Bowen full powers to enter into negotiations to settle, in the most favorable manner possible to the interests of the Republic, the present difficulty which has arisen with the United Kingdom of Great Britain, the German Empire, and the Kingdom of Italy.

In witness whereof these presents are issued in Caracas, the 18th December, 1902.

CIPRIANO CASTRO,  
*Constitutional President.*

Countersigned:

LÓPEZ BARALT,  
*Minister for Foreign Affairs.*

The fact that Mr. Bowen had been authorized to effect a direct settlement was communicated to Lord Lansdowne by Mr. White on the 19th December, and his lordship replied on the same day as follows:

*The Marquis of Lansdowne to Mr. White.*

FOREIGN OFFICE, December 19, 1902.

SIR: I have had the honor to receive your note of to-day's date informing me that Mr. Bowen, the American minister at Caracas, had informed the United

States Government that the Venezuelan Government had conferred upon him full powers to enter into negotiations on the part of Venezuela to settle the present difficulties with Great Britain, Germany, and Italy.

His Majesty's Government have, as you are aware, already accepted the proposal of the Venezuelan Government to refer to arbitration the matters in controversy between the two Governments, and have expressed the hope that the President of the United States will consent to act as arbitrator. The conditions under which such arbitration might take place have been fully considered and I hope very shortly to make you aware of them.

In these circumstances His Majesty's Government prefer not to abandon the proposals which they have already made, proposals which seem to them to afford every hope of a satisfactory settlement, in order to adopt the alternative procedure which the Venezuelan Government have apparently now suggested.

I have, etc.,

LANSDOWNE.

It is clear, therefore, that at this time His Majesty's Government preferred to adhere to the proposal to refer the matters in controversy to arbitration rather than to enter into negotiations with Mr. Bowen for a direct settlement. But Mr. Bowen himself took a different view, and insisted on attempting to settle the dispute by negotiation. This appears from the telegram of the 20th December, which is set out below. Mr. Bowen may have good reasons for his decision, but his attitude at this time is hardly consistent with the complaints insisted on so vigorously by the Venezuelan counsel before this tribunal that His Majesty's Government would not submit their claims to the judgment of The Hague Court:

[Telegraphic.]

*Mr. Bowen to Mr. Hay.*

P.]

CARACAS, December 20, 1902.

Mr. Bowen states that arbitration at The Hague is objectionable because very slow and expensive, and, in the present case, prejudicial to the interests of the Venezuelan Government, which wishes its war vessels returned at once, and the control of its rivers and ports so as to prevent arms and ammunition from being imported by the revolutionists, who are so numerous that if they receive a good supply of arms and ammunition will make the reestablishment of peace more difficult. Mr. Bowen believes that Venezuela would be satisfied to pay a good sum in cash at once to the three powers, and would agree that a mixed commission should settle the amounts to be paid on claims, and that Venezuela would furnish ample guaranty that payment of such amounts will be promptly paid. Mr. Bowen states that, in the exercise of the full powers given to him, he may decide that in the interests of Venezuela it is better to accept at once, and in full, the ultimatum of the three powers than to leave the matter to the tribunal at The Hague. He states that, of course, he prefers a modification of the ultimatums, if possible, concerning amounts of cash payments. He asks, if Hague arbitration is desired, what favorable proposition can be made to Venezuela by the powers? If they would release war ships immediately after and stop blockade? He adds that he is bound to act in the interests of Venezuela.

This declaration is important also in another respect, because it demonstrates that Venezuela was willing at that time to furnish an

ample guarantee for the prompt payment of the claims of the blockading powers irrespective of the claims of other creditors.

13. The formal reply of His Majesty's Government to the Venezuelan proposal of the 13th December was communicated to Mr. White in the following memorandum:

*Memorandum communicated to Mr. White December 23, 1902.*

His Majesty's Government have, in consultation with the German Government, taken into their careful consideration the proposal communicated by the United States Government at the instance of that of Venezuela.

The proposal is as follows:

That the present difficulty respecting the manner of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration.

The scope and intention of this proposal would obviously require further explanation. Its effect would apparently be to refer to arbitration only such claims as had reference to injuries resulting from the recent insurrection. This formula would evidently include a part only of the claims put forward by the two Governments, and we are left in doubt as to the manner in which the remaining claims are to be dealt with.

Apart, however, from this, some of the claims are of a kind which no Government could agree to refer to arbitration. The claims for injuries to the person and property of British subjects owing to the confiscation of British vessels, the plundering of their contents, and the maltreatment of their crews, as well as some claims for the ill-usage and false imprisonment of British subjects, are of this description. The amount of these claims is comparatively insignificant but the principle at stake is of the first importance, and His Majesty's Government could not admit that there was any doubt as to the liability of the Venezuelan Government in respect of them.

His Majesty's Government desire, moreover, to draw attention to the circumstances under which arbitration is now proposed to them.

The Venezuelan Government have during the last six months had ample opportunities for submitting such a proposal. On the 29th July, and again on the 11th November, it was intimated to them in the clearest language that unless His Majesty's Government received satisfactory assurances from them, and unless some steps were taken to compensate the parties injured by their conduct, it would become necessary for His Majesty's Government to enforce their just demands. No attention was paid to these solemn warnings, and in consequence of the manner in which they were disregarded, His Majesty's Government found themselves reluctantly compelled to have recourse to the measures of coercion which are now in progress.

His Majesty's Government have, moreover, already agreed that, in the event of the Venezuelan Government making a declaration that they will recognize the principle of the justice of the British claims, and that they will at once pay compensation in the shipping cases, and in the cases where British subjects have been falsely imprisoned or maltreated, His Majesty's Government will be ready, so far as the remaining claims are concerned, to accept the decision of a mixed commission, which will determine the amount to be paid and the security to be given for payment. A corresponding intimation has been made by the German Government.

This mode of procedure seemed to both Governments to provide a reasonable and adequate mode of disposing of their claims. They have, however, no

objection to substitute for the special commission a reference to arbitration, with certain essential reservations. These reservations are, so far as the British claims are concerned, as follows:

1. The claims (small, as has already been pointed out, in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews, and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration.

2. In cases where the claim is for injury to, or wrongful seizure of, property, the questions which the arbitrators will have to decide will only be (a) whether the injury took place, and whether the seizure was wrongful, and (b) if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

3. In the case of claims other than the above we are ready to accept arbitration without any reserve.

It would, in the opinion of both Governments, be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government, and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

Should the President of the United States be willing to undertake the task of arbitrator, the British and German Governments would avail themselves of his good offices with the highest satisfaction.

If it should unfortunately prove impossible for the President to render this important service to the two Governments, they are prepared to refer the questions at issue to arbitration by The Hague Tribunal.

This memorandum is not discussed in the Venezuelan case, but it plays an important part in the history of the negotiations because it contains a complete statement of the demands of His Majesty's Government, and it will be seen, on referring to the protocol of the 13th February, that these same demands were insisted on throughout, and were accepted by Venezuela in their entirety subject to the decision of this tribunal on the one point now in dispute. In view of the contentions now raised by Venezuela, the court is particularly requested to make note of the following points, which are established by this memorandum:

(1) The only claims for which compensation was peremptorily demanded without a reference to arbitration were claims for insults to the British flag, confiscation of British vessels, and ill usage of British subjects. It is stated that the amounts of these claims were comparatively insignificant, but that they were of a kind which no government could agree to refer to arbitration.

(2) The Venezuelan Government had not made any proposal for arbitration until His Majesty's Government had resort to force.

(3) The condition is insisted on that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of that obligation.



2. In the view of the Venezuelan Government the question to be decided by this tribunal is one of ethics and not of law. In the speech of her leading counsel it was stated to be an ethical question to be decided broadly by the test of the justice or injustice of the war waged upon Venezuela. If there was adequate cause for declaring war, then it appears to be admitted that the blockading powers were entitled to preferential treatment, but if there was no adequate cause for war then it is said there is no case for preferential treatment. In pursuance of this contention, the argument presented on behalf of Venezuela was devoted, almost entirely, to an attempt to establish that there was no adequate cause for war, and a detailed examination was presented of the motives of the blockading powers in resorting to force, and of the grievances which Venezuela alleged against those powers, in order to prove that the action taken against Venezuela was contrary to the laws which prevail, or rather should prevail, among nations, and that therefore the blockading powers are debarred from obtaining any better treatment than the other powers.

It is submitted, with the utmost confidence, that the imputations made upon the conduct of His Majesty's Government are absolutely destitute of foundation, and that, by whatever test the matter be decided, there was adequate cause for war; that the motives of the blockading powers were thoroughly legitimate; that the alleged grievances of Venezuela against those powers are nonexistant, and that the action taken against Venezuela was in entire accordance with international law, both before and after the peace conference.

3. It is submitted, however, that all the considerations on this point elaborated in such detail in the Venezuelan case are wholly irrelevant, and that the question to be decided in this arbitration is one, not of ethics, but of law. The decision must be based on principles known to the law of nations, and not on any indeterminate standard of moral right or moral wrong. His Majesty's Government do not shrink from an investigation into the motives of their conduct, if, in the opinion of this tribunal, such an investigation is in any way pertinent to the present issues. But, for reasons which will hereinafter more fully appear, they submit that any such inquiry is entirely immaterial. The sole question to be determined by this tribunal is whether or not, in the circumstances existing at the time of the signing of the protocols, the other creditor powers had a legal right to share *pari passu* in any security which the blockading powers might obtain for themselves by their own action.

The decision of this question must, it is submitted, depend on the position of the parties at the date of the protocols of the 13th February and on the negotiations which led up to the signature of those protocols, and not on the merits or demerits of the conduct of the blockading powers, judged by some fantastic standard of ethics for

which there is admittedly no authority in the law of nations. It is because the consideration of these matters, which is indispensable for the proper adjudication of the present dispute, is almost entirely excluded in the case presented on behalf of the Venezuelan Government and in the speech of their leading counsel that it is necessary to present a statement of the material facts and of the negotiations in order of date, and to give a short summary of the previous controversy between the parties, before proceeding to discuss the contentions of His Majesty's Government and of the Venezuelan and United States Governments in detail.

#### STATEMENT OF FACTS.

(a) *British complaints and the refusal of the Venezuelan Government to discuss them.*—4. The general nature of the complaints of His Majesty's Government against Venezuela has been stated in the British case, and a summary of the instances in which the Venezuelan Government unjustifiably seized British ships and maltreated British subjects is given in the appendix to that case. It will be remembered that the justice of the British claims has been expressly admitted by Venezuela in article 1 of the protocol, and it therefore appears sufficient that the justice of the British claims has been expressly admitted by Lord Lansdowne to Mr. Haggard on the 29th July, 1902. This telegram is to be found in the British Blue Book which has been submitted to the tribunal as part of the Venezuelan appendix, and is in the following terms:

[Telegram.]

*The Marquis of Lansdowne to Mr. Haggard.*

FOREIGN OFFICE, July 29, 1902.

The liberty and property of British subjects have, in a succession of cases, been interfered with in a wholly unwarrantable manner by the Venezuelan Government. The following incidents have been the subject of serious consideration by His Majesty's Government:

The action of the gunboat *Augusto* in seizing and deporting certain British subjects in January, 1901; the seizure of John Craig's boat and property on Patos Island in the February following; the similar interference on the same occasion in the case of the *Buena Fe*, which was accompanied by violation of territory, and the cases of the vessels *Maria Teresa*, *Pastor*, *Indiana*, and *In Time*.

No satisfactory explanations have been received from the Venezuelan Government in any of these cases. The destruction of the British ship *Queen* is a still more flagrant instance of such interference.

His Majesty's Government can not tolerate a continuance of the conduct which culminated in the last-mentioned incident, and you should address a formal protest respecting it to the Venezuelan Government. You should intimate to the President and the minister for foreign affairs, in unmistakable terms, that unless His Majesty's Government receive explicit assurances that incidents of this nature shall not recur, and unless the Venezuelan Government promptly pay to the injured parties full compensation wherever satisfactory evidence has been

furnished to His Majesty's Government that such is justly due, His Majesty's Government will take such steps as may be necessary to obtain the reparation which they are entitled to demand from the Venezuelan Government in these cases, as well as for any loss to British subjects caused by the unjustifiable conduct of the acting Venezuelan consul at Trinidad, and on account of the railway claims.

The passage relating to the destruction of the *Queen* is, for some reason, omitted in the citation of this telegram in the Venezuelan case; nor is there any allusion to the seizure of the *Queen* in the detailed criticism of the British grievances which is to be found in that case, and in the speech of Mr. MacVeagh. It has already been submitted that the reasons for the action of the blockading powers are not material to the question now before this tribunal, but as the Venezuelan Government have thought it proper to devote more than one-third of their printed case to a detailed statement of these matters, it is important to mention that the seizure of the *Queen*, which occurred in June, 1902, and for which no justification or excuse is alleged, is a case of a peculiarly flagrant character. This vessel, flying the British flag while on a voyage from Grenada to Trinidad in ballast, was seized on the high seas by the Venezuelan gunboat *Restaurador*, was towed into the Venezuelan port of Porlamar, and there stripped of her sails and deprived of her papers. She was finally confiscated on a mere suspicion of having carried a cargo of arms to Venezuela, and the crew were put on shore and left destitute.

It is specially to be observed that the immediate demands of His Majesty's Government were limited to the obtaining of an assurance that acts such as these should not be repeated, and that compensation should be paid for them; but that it was intimated that if it became necessary to take action in support of these claims, His Majesty's Government would also insist on payment of certain railway claims, the nature of which is explained in a succeeding paragraph, and which had been the subject of remonstrance for many months past, as well as of the claims in respect of the improper conduct of the Venezuelan consul at Trinidad, for which there was no possible justification.

5. In accordance with the above instructions given by Lord Lansdowne, a formal protest was made to Doctor Baralt, the acting minister for foreign affairs at Caracas, by Mr. Haggard on behalf of His Majesty's Government. The reception it met with is recorded in his report, dated the 1st August, 1902, in the following passage:

I took this note in person to the acting minister for foreign affairs and carefully translated it to him word for word, at the same time explaining and enlarging on it in terms about which there could certainly not be any possible mistake. At the close of each sentence I asked his excellency if he thoroughly understood it, and satisfied myself that he did so. I pointed out to him the extreme gravity of the communication, and said that he would thoroughly under-

stand that it could only have been made after full and serious consideration, not only as to the communication itself, but as to the consequences which it involved; that, in fact, His Majesty's Government meant what they said, and that they did not use such words without fully intending to act up to them in case of need.

I therefore begged him to consider, and specially to induce the President to consider, the note very earnestly, in view particularly of the serious consequences which might be expected to follow the refusal of the Venezuelan Government to comply with the just demands of His Majesty's Government.

His excellency accepted the note quietly. His final remark was that they were used to these communications. I said that that might be the case, but not from England; that his excellency must bear in mind that we had been extraordinarily patient; that His Majesty's Government were slow in taking such a weighty decision, but that they had the power to execute it when once taken.

On the 2d August a written reply was received from Señor Baralt, in which he stated in effect that until the complaints of the Venezuelan Government in reference to the *Ban Righ* were satisfied they could not even discuss any other matters.

6. It will be noticed that the alleged grievance of the Venezuelan Government in respect of the *Ban Righ* is the reason given by Doctor Baralt in this note for his refusal to discuss the complaints of His Majesty's Government, and it will be found that the same excuse had been put forward in answer to every complaint of His Majesty's Government for some months previously. In February, 1902, Mr. Haggard had complained that the Venezuelan Government had arbitrarily taken possession of the control and equipment of the Bolivar Railway, and that, at the risk of their lives, English subjects in the service of the company had been obliged by the authorities to render service for military purposes; but General Pachano, the Venezuelan minister for foreign affairs, declined even to investigate the matter until His Majesty's Government had complied with the requests of the Venezuelan Government to seize the *Ban Righ*. The same attitude was maintained by the Venezuelan Government throughout, and they invariably refused even to take into consideration the complaints presented to them.

7. The conduct of His Majesty's Government in respect to the *Ban Righ* can not, as is submitted, be material to the present question, but in view of the importance attached to it in the Venezuelan case and in the speech of Mr. MacVeagh, it is desired to present some short statement of the facts relating to it. A fuller account is to be found in the British Blue Book.

On the 8th November, 1901, the attention of His Majesty's Government was called by the officers of customs to the fact that a vessel called the *Ban Righ* was being fitted out in the Thames in an apparently suspicious manner. It was known she was bound for the West Indies, and as there was at that time an insurrection in Venezuela, she was detained as a measure of precaution. On the 15th November, however, the Government was informed by Señor Ponce, the Colom-

bian minister in London, that the vessel was intended for the service of the Colombian Government, and after being officially informed by the minister for foreign affairs in Venezuela that no state of war existed between Colombia and Venezuela, the vessel was released on the 22d November. Indeed, it would have been impossible in these circumstances for His Majesty's Government to detain her longer.

The vessel subsequently appears to have shipped a cargo of arms at Antwerp, which had been consigned to that port from Paris, and to have sailed for the West Indies. It further appears that the sale to the Colombian Government was completed on the 1st of January at the French port of Martinique, and that her English crew were there dismissed and her British registry shortly afterwards closed. Her movements after that time are uncertain, but on the 23d March, 1902, she entered the harbor of Port of Spain, under the name of the *Bolivar*, flying the man-of-war's flag of the Colombian Republic, with a commission in due form from that Government. It would have been wholly unjustifiable for His Majesty's Government to arrest the public vessel of a friendly power, even if the complaints of Venezuela had proved, on investigation, to be well founded. Indeed, any such action would have constituted an act of war against Colombia. But from a desire to satisfy Venezuela they went as far as they could go without resort to force and requested the *Ban Righ* to leave the port at once.

The instructions from Lord Lansdowne to Mr. Haggard were in the following terms:

[Telegram.]

*The Marquis of Lansdowne to Mr. Haggard.*

FOREIGN OFFICE, March 26. 1902.

As the *Bolivar* is stated to be now flying the Colombian national flag, and, ostensibly at least, is a man-of-war of that State, His Majesty's Government are not in a position properly to take any action against her. It would be an act of war against Colombia to do so if she is a Colombian public vessel.

His Majesty's Government are under no liability for any depredation that she may commit, nor can Venezuela properly put forward any charge of negligence in view of the circumstances in which the vessel was permitted to leave this country. If the British flag has been used since the transfer effected at Martinique it was a wrongful act, no responsibility for which attaches to His Majesty's Government.

The vessel will not, however, be allowed to make any British port a base of hostile operations against Venezuela, and the governor of Trinidad has consequently been instructed to refuse her permission to coal, and to request her at once to leave Port of Spain.

The substance of this telegram was communicated to the Venezuelan Government by Mr. Haggard in a note dated the 27th March, but it is to be noticed that the citation of this note in the Venezuelan



case (p. 83) is not correct. The words "notwithstanding the notorious character of the ship in question," which are there printed as if they formed part of the note, are not to be found in the copies of that note in the Venezuelan appendix or in the British Blue Book; nor do the extracts from the report of the British minister cited on page 84 fully convey the sense of that report.

The Colombian Government subsequently gave assurances that the vessel would not be used for purposes of hostility against Venezuela, and she was thereupon permitted to refit and leave for Colombian waters.

It is obvious that His Majesty's Government could not, in view of the assurances of the Colombian Government, have taken any action. If those assurances were false, the remedy of Venezuela was against Colombia, and it was beyond all reason to demand that His Majesty's Government should commit an act of war against Colombia for the benefit of Venezuela. It is also to be noticed that the *Ban Righ* was not manned by a British crew after she left Martinique, and that after she had sailed from London no addition was ever made to her crew or her warlike equipment in any British port. These facts were frequently brought to the knowledge of the Venezuelan Government, and the whole matter was explained to them on many occasions, but they declined to accept any explanation, and persisted in their demands that His Majesty's Government should arrest the *Ban Righ*, although they were not willing themselves to take any action against the Government of Colombia in respect of it.

8. Resuming now the story of the communications which passed between the parties, it will be found that on the 11th November a further remonstrance was addressed on behalf of His Majesty's Government to the Venezuelan Government in these terms:

*Mr. Haggard to Señor Baralt.*

CARACAS, November 11, 1902.

M. LE MINISTRE: I am instructed by His Majesty's Government to inform that of the Republic of Venezuela that they regret the unsatisfactory character of the reply to the representations contained in my note to your excellency of the 30th July last. They are unable to admit that the serious causes of complaint put forward can be met by a refusal to discuss them.

If such a refusal is persisted in it will become the duty of His Majesty's Government to consider what steps they should take for the protection of British interests.

They are, however, unwilling to exclude at once all possibility of proceeding with negotiations, and they are therefore ready to consider any further communication which the Government of the Republic may be prepared to make.

I avail, etc.,

W. H. D. HAGGARD.

Señor Baralt replied to this note at some length. The full text of his reply has been set out in the appendix to the British case. It will



be seen that in effect it is a mere reiteration of the refusal of the Venezuelan Government to take the matters complained of into consideration until His Majesty's Government had made compensation for the damage alleged to have been caused by the *Ban Righ*.

9. It was impossible for His Majesty's Government to acquiesce in this position, and on the 2d December Lord Lansdowne instructed Mr. Haggard to present a final remonstrance:

[Telegram.]

*The Marquis of Lansdowne to Mr. Haggard.*

FOREIGN OFFICE, December 2, 1902.

Your telegram of the 17th ultimo.

In answer to the Venezuelan note, you should address a written communication to the Venezuelan minister for foreign affairs, pointing out that, with regard to the *Ban Righ*, His Majesty's Government have given full explanations, and have shown that on this account there is no legitimate ground of complaint. Nor do they consider that there is any justification for attributing blame to the authorities at Trinidad, who only acted in accordance with instructions.

You should then state that His Majesty's Government also regret the situation which has arisen, but that they can not accept the note as in any degree a sufficient answer to your communications, or as indicating an intention on the part of the Venezuelan Government to meet the claims which His Majesty's Government have put forward, and which must be understood to include all well-founded claims which have arisen in consequence of the late civil war and previous civil wars, and of the maltreatment or false imprisonment of British subjects, and also settlement of the external debt.

You will request the Venezuelan Government to make a declaration that they recognize in principle the justice of these claims, that they will at once pay compensation in the shipping cases, and in the cases where British subjects have been falsely imprisoned or maltreated, and that as to other claims, they will be prepared to accept the decisions of a mixed commission with regard to the amount and the security for payment to be given.

You should express a hope that the Venezuelan Government will comply with these demands, and not compel His Majesty's Government to take steps to obtain satisfaction. You should add that His Majesty's Government have been informed of the claims of the German Government against Venezuela, that the two Governments have agreed to act together in order to obtain a settlement of all their claims, and that His Majesty's Government will require the immediate payment of a sum equal to that which may in the first instance be paid to the German Government. Any balance after the discharge of pressing claims will be held on account for the liquidation of the claims which will go before the commission.

You should make it quite clear that this communication must be regarded in the light of an ultimatum.

The ultimatum addressed by Mr. Haggard to Señor Baralt in pursuance of these instructions, and the reply of Señor Baralt, are set out in full in the appendix to the British case. It will be observed that the Venezuelan reply was, in effect, a refusal to accept the demands of His Majesty's Government.

(b) *Action of the blockading powers.*—10. On the 9th December

(in error stated in the British case as the 8th December) the first act of force occurred, viz, the seizure of three Venezuelan ships of war. President Castro retaliated by arresting and imprisoning all persons of British and German nationality in Caracas, but these were released the next day on the intercession of the United States minister. On the 20th December the blockade was declared, and was maintained until after the signing of the protocols. It appears from the subsequent correspondence that the blockade was of an effective character, and that Venezuela was most anxious from the first to induce the blockading powers to terminate it.

It has already been stated in the British case that the whole of the Venezuelan navy and a considerable number of trading ships were captured by the allies during the hostilities, and were in their hands at the time of the signing of the protocols.

(c) *Negotiations after the commencement of hostilities.*—11. It is now necessary to invite the attention of the tribunal to the details of the negotiations which took place between Venezuela and the blockading powers after the commencement of hostilities, because those negotiations establish beyond the possibility of doubt that the allies insisted from the first to last, as a condition precedent to raising the blockade, that Venezuela should agree to give them security adequate to insure the payment of their claims within a reasonable time; and that Venezuela accepted that condition without reserve, and agreed to provide the necessary securities out of her customs receipts.

12. These negotiations were initiated with His Majesty's Government by a communication from Mr. White, the United States chargé d'affaires in London, forwarding a proposal for arbitration from the Government of Venezuela:

*Mr. White to the Marquis of Lansdowne.*

AMERICAN EMBASSY,  
London, December 13, 1902.

MY LORD: The Government of Venezuela has requested the American minister at Caracas to communicate to the Government of His Britannic Majesty and of Germany a proposition to the effect that the present difficulty respecting the manner of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration; and I have the honor, in accordance with instructions from my Government, to communicate this proposal to your lordship.

In view of the present condition of affairs in Venezuela, I venture to hope that it may be possible for you to enable me to inform my Government, at an early date, of the decision arrived at by His Majesty's Government, with regard to the proposal in question.

I have, etc.,

HENRY WHITE.

This proposal was accepted in principle by His Majesty's Government, and Mr. White was so informed by Lord Lansdowne on the

18th December, as appears by a dispatch on that date to Sir M. Herbert:

*The Marquis of Lansdowne to Sir M. Herbert.*

FOREIGN OFFICE, December 18, 1902.

SIR: I informed the United States chargé d'affaires this afternoon that the cabinet had decided at its last meeting on the 16th to accept in principle the idea of settling the Venezuelan dispute by arbitration, and we had since ascertained that the view of the German Government was in accord with our own. We considered, however, that some of our claims were of such a kind that we could not include them in the reference. I said that I could not give him at that moment a precise description of the excluded claims, but that I should be able to do so shortly. I was authorized to say that it would be extremely agreeable to His Majesty's Government if the President of the United States would consent to act as arbitrator.

It was satisfactory to me to find that both Governments had come to a conclusion which, judging from the communication which he had made to me last night, was likely to be received with satisfaction by the United States Government.

I added that we did not propose for the present to desist from the measures of coercion now in progress.

I am, etc.,

LANSDOWNE.

On the same day, however, Mr. Bowen, the American minister at Caracas, was formally authorized by the President of Venezuela to act on behalf of that country and to negotiate with the three blockading powers with a view of arriving at a direct settlement of the questions in dispute. This authority was conferred in the following terms and it will be observed that it is restricted to the claims of the blockading powers:

The Venezuelan Government confers on Mr. Herbert W. Bowen full powers to enter into negotiations to settle, in the most favorable manner possible to the interests of the Republic, the present difficulty which has arisen with the United Kingdom of Great Britain, the German Empire, and the Kingdom of Italy.

In witness whereof these presents are issued in Caracas, the 18th December, 1902.

CIPRIANO CASTRO,  
*Constitutional President.*

Countersigned:

LÓPEZ BARALT,  
*Minister for Foreign Affairs.*

The fact that Mr. Bowen had been authorized to effect a direct settlement was communicated to Lord Lansdowne by Mr. White on the 19th December, and his lordship replied on the same day as follows:

*The Marquis of Lansdowne to Mr. White.*

FOREIGN OFFICE, December 19, 1902.

SIR: I have had the honor to receive your note of to-day's date informing me that Mr. Bowen, the American minister at Caracas, had informed the United

States Government that the Venezuelan Government had conferred upon him full powers to enter into negotiations on the part of Venezuela to settle the present difficulties with Great Britain, Germany, and Italy.

His Majesty's Government have, as you are aware, already accepted the proposal of the Venezuelan Government to refer to arbitration the matters in controversy between the two Governments, and have expressed the hope that the President of the United States will consent to act as arbitrator. The conditions under which such arbitration might take place have been fully considered and I hope very shortly to make you aware of them.

In these circumstances His Majesty's Government prefer not to abandon the proposals which they have already made, proposals which seem to them to afford every hope of a satisfactory settlement, in order to adopt the alternative procedure which the Venezuelan Government have apparently now suggested.

I have, etc.,

LANSDOWNE.

It is clear, therefore, that at this time His Majesty's Government preferred to adhere to the proposal to refer the matters in controversy to arbitration rather than to enter into negotiations with Mr. Bowen for a direct settlement. But Mr. Bowen himself took a different view, and insisted on attempting to settle the dispute by negotiation. This appears from the telegram of the 20th December, which is set out below. Mr. Bowen may have good reasons for his decision, but his attitude at this time is hardly consistent with the complaints insisted on so vigorously by the Venezuelan counsel before this tribunal that His Majesty's Government would not submit their claims to the judgment of The Hague Court:

[Telegraphic.]

*Mr. Bowen to Mr. Hay.*

P.]

CARACAS, December 20, 1902.

Mr. Bowen states that arbitration at The Hague is objectionable because very slow and expensive, and, in the present case, prejudicial to the interests of the Venezuelan Government, which wishes its war vessels returned at once, and the control of its rivers and ports so as to prevent arms and ammunition from being imported by the revolutionists, who are so numerous that if they receive a good supply of arms and ammunition will make the reestablishment of peace more difficult. Mr. Bowen believes that Venezuela would be satisfied to pay a good sum in cash at once to the three powers, and would agree that a mixed commission should settle the amounts to be paid on claims, and that Venezuela would furnish ample guaranty that payment of such amounts will be promptly paid. Mr. Bowen states that, in the exercise of the full powers given to him, he may decide that in the interests of Venezuela it is better to accept at once, and in full, the ultimatum of the three powers than to leave the matter to the tribunal at The Hague. He states that, of course, he prefers a modification of the ultimatums, if possible, concerning amounts of cash payments. He asks, if Hague arbitration is desired, what favorable proposition can be made to Venezuela by the powers? If they would release war ships immediately after and stop blockade? He adds that he is bound to act in the interests of Venezuela.

This declaration is important also in another respect, because it demonstrates that Venezuela was willing at that time to furnish an

ample guarantee for the prompt payment of the claims of the blockading powers irrespective of the claims of other creditors.

13. The formal reply of His Majesty's Government to the Venezuelan proposal of the 13th December was communicated to Mr. White in the following memorandum:

*Memorandum communicated to Mr. White December 23, 1902.*

His Majesty's Government have, in consultation with the German Government, taken into their careful consideration the proposal communicated by the United States Government at the instance of that of Venezuela.

The proposal is as follows:

That the present difficulty respecting the manner of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration.

The scope and intention of this proposal would obviously require further explanation. Its effect would apparently be to refer to arbitration only such claims as had reference to injuries resulting from the recent insurrection. This formula would evidently include a part only of the claims put forward by the two Governments, and we are left in doubt as to the manner in which the remaining claims are to be dealt with.

Apart, however, from this, some of the claims are of a kind which no Government could agree to refer to arbitration. The claims for injuries to the person and property of British subjects owing to the confiscation of British vessels, the plundering of their contents, and the maltreatment of their crews, as well as some claims for the ill-usage and false imprisonment of British subjects, are of this description. The amount of these claims is comparatively insignificant but the principle at stake is of the first importance, and His Majesty's Government could not admit that there was any doubt as to the liability of the Venezuelan Government in respect of them.

His Majesty's Government desire, moreover, to draw attention to the circumstances under which arbitration is now proposed to them.

The Venezuelan Government have during the last six months had ample opportunities for submitting such a proposal. On the 29th July, and again on the 11th November, it was intimated to them in the clearest language that unless His Majesty's Government received satisfactory assurances from them, and unless some steps were taken to compensate the parties injured by their conduct, it would become necessary for His Majesty's Government to enforce their just demands. No attention was paid to these solemn warnings, and in consequence of the manner in which they were disregarded, His Majesty's Government found themselves reluctantly compelled to have recourse to the measures of coercion which are now in progress.

His Majesty's Government have, moreover, already agreed that, in the event of the Venezuelan Government making a declaration that they will recognize the principle of the justice of the British claims, and that they will at once pay compensation in the shipping cases, and in the cases where British subjects have been falsely imprisoned or maltreated, His Majesty's Government will be ready, so far as the remaining claims are concerned, to accept the decision of a mixed commission, which will determine the amount to be paid and the security to be given for payment. A corresponding intimation has been made by the German Government.

This mode of procedure seemed to both Governments to provide a reasonable and adequate mode of disposing of their claims. They have, however, no

objection to substitute for the special commission a reference to arbitration, with certain essential reservations. These reservations are, so far as the British claims are concerned, as follows:

1. The claims (small, as has already been pointed out, in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews, and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration.

2. In cases where the claim is for injury to, or wrongful seizure of, property, the questions which the arbitrators will have to decide will only be (a) whether the injury took place, and whether the seizure was wrongful, and (b) if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

3. In the case of claims other than the above we are ready to accept arbitration without any reserve.

It would, in the opinion of both Governments, be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government, and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

Should the President of the United States be willing to undertake the task of arbitrator, the British and German Governments would avail themselves of his good offices with the highest satisfaction.

If it should unfortunately prove impossible for the President to render this important service to the two Governments, they are prepared to refer the questions at issue to arbitration by The Hague Tribunal.

This memorandum is not discussed in the Venezuelan case, but it plays an important part in the history of the negotiations because it contains a complete statement of the demands of His Majesty's Government, and it will be seen, on referring to the protocol of the 13th February, that these same demands were insisted on throughout, and were accepted by Venezuela in their entirety subject to the decision of this tribunal on the one point now in dispute. In view of the contentions now raised by Venezuela, the court is particularly requested to make note of the following points, which are established by this memorandum:

(1) The only claims for which compensation was peremptorily demanded without a reference to arbitration were claims for insults to the British flag, confiscation of British vessels, and ill usage of British subjects. It is stated that the amounts of these claims were comparatively insignificant, but that they were of a kind which no government could agree to refer to arbitration.

(2) The Venezuelan Government had not made any proposal for arbitration until His Majesty's Government had resort to force.

(3) The condition is insisted on that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of that obligation.



14. These demands were accepted without reserve by Venezuela, as appears from the following documents:

*Mr. White to the Marquis of Lansdowne.*

AMERICAN EMBASSY,

*London, January 1, 1903.*

MY LORD: I have the honor, in accordance with instructions from my Government, to communicate to your lordship the following copy of a telegram which was received yesterday by Mr. Secretary Hay from Mr. Bowen, American minister to Venezuela:

"I have received the following answer from the President of Venezuela:

"I recognize in principle the claims which the allied powers have presented to Venezuela. They would already have been settled if it had not been that the civil war required all the attention and all the resources of the Government. To-day the Government bows to superior force, and desires to send Mr. Bowen to Washington at once to confer there with the representatives of the powers that have claims against Venezuela, in order to arrange either an immediate settlement of all the claims or the preliminaries for a reference to the tribunal of The Hague, or to an American Republic, to be selected by the allied powers and by the Government of Venezuela. Mr. Bowen would be duly authorized to settle the whole question as the representative of Venezuela.

"'CIPRIANO CASTRO.'"

Copies of the foregoing telegram from Mr. Bowen have also been transmitted by the Secretary of State to the American ambassadors at Berlin and Rome.

I have, etc.,

HENRY WHITE.

*The Marquis of Lansdowne to Mr. White.*

FOREIGN OFFICE, *January 5, 1903.*

SIR: I have the honor to inform you, in reply to your communication of the 1st instant, that His Majesty's Government have taken into consideration the answer received by Mr. Secretary Hay from the President of the Venezuelan Republic to the proposals contained in the memorandum which, on behalf of His Majesty's Government, I handed to you on the 23d December, 1902.

His Majesty's Government observe with satisfaction President Castro's statement that he recognizes "in principle" the claims which they have put forward. His Majesty's Government understand this statement to signify that President Castro agrees, on the part of the Venezuelan Government, that any discussions in which Mr. Bowen, as the representative of that Government, is to engage at Washington with the representative of His Majesty's Government are to proceed upon the assumption that the Venezuelan Government unreservedly accept, and agree to be bound by the conditions laid down in the memorandum of the 23d December, 1902, which run as follows:

"1. The claims (small, as has already been pointed out, in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews, and the maltreatment and false imprisonment of British subjects are not to be referred to arbitration.

"2. In cases where the claim is for injury to, or wrongful seizure of, property, the questions which the arbitrators will have to decide will only be: (a) whether the injury took place, and whether the seizure was wrongful; and (b) if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

"In the case of claims other than the above, we are ready to accept arbitration without any reserve.

"It would, in the opinion of both Governments (British and German), be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation."

On receiving a definite assurance from President Castro that this interpretation of his language is accepted by him as correct, and that whatever procedure be adopted adequate provision will be made for the prompt satisfaction of the claims specified in paragraph (1), His Majesty's Government will be prepared to authorize His Majesty's ambassador at Washington to confer on this basis with Mr. Bowen, as the representative of the Venezuelan Government, and will furnish Sir M. Herbert with the necessary instructions for examining the possibility of an immediate settlement, or, failing such a settlement, for arranging a reference of all points left open for arbitration to the tribunal at The Hague.

His Majesty's Government will be much obliged if Mr. Secretary Hay will be good enough to take such steps as may be necessary to communicate the substance of this memorandum to President Castro, and will request an answer at the President's earliest convenience.

I have, etc.,

LANSDOWNE.

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*Mr. White to the Marquis of Lansdowne.*

AMERICAN EMBASSY,

*London, January 9, 1903.*

MY LORD: I have the honor, in accordance with instructions from my Government, to communicate to your lordship the copy of a telegram which was received yesterday morning by Mr. Secretary Hay from Mr. Bowen, the American minister at Caracas:

"I have just received the following from President Castro:

"MR. MINISTER: The Venezuelan Government accepts the conditions of Great Britain and Germany and requests you to go immediately to Washington for the purpose of conferring there with the diplomatic representatives of Great Britain, Germany, and with the diplomatic representatives of the other nations that have claims against Venezuela, and to arrange either an immediate settlement of said claims or the preliminaries for submitting them to arbitration.

"CIPRIANO CASTRO,

"*'Constitutional President.'*

[Confidential.]

"If, as I understand, Great Britain and Germany want to know what guarantee they will have, please inform them that it will be the custom-houses. Consequently, I beg that the blockade be raised at once.

"BOWEN."

I am instructed, furthermore, to inform your lordship that Mr. Bowen will proceed to Washington immediately.

I am, etc.,

HENRY WHITE.

It is, therefore, beyond dispute that at this time Venezuela had expressly agreed to provide security sufficient to insure the punctual discharge of the claims of the blockading powers.

15. It is true that the authority conferred on Mr. Bowen in this last note extends to the settlement of the claims of other nations as well as those of the blockading powers; but the acceptance of the conditions imposed by the latter powers is unqualified, and there is no suggestion that the settlement of their claims was to be subject to the settlement of the claims of other nations, or that the security of the custom-house receipts offered to them in consideration of their raising the blockade was to be shared with other claimants. Indeed, it is impossible that any such meaning could have been intended. If the blockading powers had acted on Mr. Bowen's request and raised the blockade at once, it could not have been said, with any show of good faith, that the security given to them might be depreciated to any extent by the admission of the claims of other creditors.

This was certainly the understanding of Lord Lansdowne at the time, for when his lordship's attention was called to the fact that the authority to Mr. Bowen apparently contemplated that Mr. Bowen should confer with the representatives of other creditor nations, he declined to entertain the supposition in any way.

*The Marquis of Lansdowne to Sir F. Lascelles.*

FOREIGN OFFICE, *January 15, 1903.*

SIR: I had some conversation yesterday with the German ambassador in regard to the action which might be taken by the British and German Governments in consequence of the communication made to us on the 9th instant by the Government of the United States as to Venezuelan affairs.

\* \* \* \* \*

His excellency called my attention to the fact that President Castro's letter apparently contemplated that Mr. Bowen should confer not only with the representatives of Great Britain and Germany, but with those of all other nations having claims against Venezuela. His excellency regarded this intimation with some alarm.

I said that it seemed to me that the blockading powers stood on an entirely different footing from the rest, and that, in my view, it would be impossible for us to allow our representatives to take part in a general discussion at which a number of other powers would also be represented.

\* \* \* \* \*

*The Marquis of Lansdowne to Sir M. Herbert.*

FOREIGN OFFICE, *January 16, 1903.*

SIR: I inclose for your information a copy of a dispatch which I have addressed to Sir F. Lascelles recording my most recent conversations with the German ambassador in regard to Venezuelan matters.

I desire to call your excellency's special attention to the manner in which the conferences with Mr. Bowen should be conducted. His Majesty's Government are not prepared to join in a general discussion with other powers as to the questions at issue with Venezuela, and your excellency must make it clear

to Mr. Bowen that you are authorized to discuss with him only the British claims and the proposals which he may offer for their liquidation.

You will, however, communicate with your German and Italian colleagues as to the progress of your negotiations, and they will no doubt be instructed to keep you informed of their proceedings.

I am, etc.,

LANSDOWNE.

Mr. Bowen, too, was himself of the same opinion, for it is obvious from a telegram sent by him to Mr. Hay on the day before that on which he had received these instructions from President Castro that the claims of the allied powers were alone in his contemplation at that time.

CARACAS, *January 6, 1903.*

Mr. Bowen states that the attitude of the authorities in Caracas, both toward foreigners and the blockaders, has been exemplary since the 10th day of last December, when all the British and German subjects resident in Venezuela who had been arrested were set free. He reports that President Castro has done all in his power to come to a fair agreement with the allied powers; that he has been ready and anxious to settle his controversy with them; that he has believed that if he could send a representative to Washington to confer with diplomatic representatives there of the allied powers his representative could convince them that the terms he has to offer are reasonable, and would be so satisfactory that it would be unnecessary to carry the controversy to The Hague; that the claims against him are purely commercial in character; that he acknowledges that he must pay such of them as are just; that he would have preferred to wait before paying them until he had reestablished peace in Venezuela, but since the allied powers have declared he must yield at once to their demands, he feels that he is obliged to bow to superior force. Mr. Bowen further says that President Castro, under the foregoing circumstances, desires a speedy settlement of the controversy, so as to put an end to the blockade of his ports, which deprives him of paying the expenses of his Government, and which is oppressive to his people and to all foreigners residing in Venezuela. President Castro thinks it strange that as he is willing to pay what he owes, and to offer a good guaranty that he will satisfy his creditors, he should not be allowed to come to an agreement with them without delay, but is forced to carry the controversy before the tribunal at The Hague. President Castro has the greatest respect for that tribunal, but does not see why he should be forced to submit a controversy to it which could be settled at Washington quickly, easily, and at little expense. A proposition to settle in civil cases being always in order before the court renders its judgment, President Castro thinks that, as this is essentially a civil case, the allied powers should at least give his representative a courteous hearing; but if they are indisposed to do so, and insist on The Hague, he feels that they ought to raise their blockade the moment he binds himself to abide by the decision of that tribunal. As he represents a weak nation, and can not enforce his views, he trusts to the Government at Washington to use its good offices to secure just treatment for him.

16. Mr. Bowen reached Washington on the 20th December, and immediately requested that the blockade should be raised, but this was refused until the conditions insisted on by His Majesty's Government had been fulfilled.

These conditions had been stated again in detail in the instructions

sent by Lord Lansdowne to His Majesty's ambassador at Washington on the 13th January:

*The Marquis of Lansdowne to Sir M. Herbert*

FOREIGN OFFICE, *January 13, 1903.*

I have now to give your excellency the following instructions:

Mr. Bowen will, no doubt, on his arrival at Washington, ask you, either directly or through the United States Government, to receive him, and you should in reply intimate that you are authorized to confer with him, as the representative of the Venezuelan Government, for the purpose of examining the possibility of an immediate settlement of the claims put forward by His Majesty's Government, or, failing such a settlement, of arranging a reference of all points left open for arbitration to the tribunal at The Hague.

The course of the negotiations will, in a great measure, depend upon the instructions with which Mr. Bowen has been furnished, and you will, in the first place, ascertain whether the proposals which he is empowered to submit are in strict accordance with the conditions set forth in my memorandum of the 23d December and note of the 5th January, to which reference has been already made.

Whether those proposals are made in contemplation of an immediate settlement without reference to arbitration, or whether the discussion is directed to the preliminaries of arbitration, it will be indispensable that Mr. Bowen should at the outset satisfy you that he is authorized to arrive at a prompt and satisfactory settlement of those British claims which are included in the first of the three categories enumerated in the memorandum of the 23d December, claims, namely, which arise out of the seizure and plundering of British vessels and the outrages on their crews and the maltreatment and false imprisonment of British subjects. These claims amount to about £5,500, and His Majesty's Government require that this liability should be at once satisfied.

Other claims for compensation, including the railway claims and those for injury to, or wrongful seizure of, property are estimated as amounting to about £600,000. His Majesty's Government will be ready to accept in satisfaction of these claims either a sufficient cash payment or a guaranty based on security which must be adequate, and which the Venezuelan Government must be bound not to alienate for any other purpose. His Majesty's Government will be ready to renew the proposal which they deemed it equitable to make in the first instance, viz, that, before the amount to be actually handed over to claimants of this class is finally decided, a commission, upon which Venezuela would be represented, should be appointed to examine and report upon the amount to be awarded in satisfaction of each claim. It would probably be convenient that the commission, if appointed, should meet at Port of Spain. Should a cash payment have been accepted by His Majesty's Government, they will be prepared to refund any surplus which may be available after the examination.

It is desirable that advantage should be taken of this opportunity in order to effect a settlement of the claims of the bondholders. The British creditors are principally interested in the loan of 1881. This loan represents the outcome of various arrangements under which the bondholders have submitted to large reductions in their claims. On the 31st December last there were fifty-six monthly installments of the debt service in arrear, representing a sum of about £394,625. An arrangement for the settlement of the external debt of Venezuela has been drawn up by the council of foreign bondholders and the Disconto Gesellschaft of Berlin. The terms of this arrangement seem to be of a liberal character, and should be acceptable to the Venezuelan Government. I under-

stand that in March, 1901, the Venezuelan National Assembly passed a law authorizing the President to make a settlement with the bondholders on these lines. I inclose copies of memoranda furnished to me by the council of foreign bondholders, showing the present position of the 1881 and 1896 loans.

If the endeavor to arrive at a direct settlement should prove unavailing, you will proceed to discuss with Mr. Bowen the preliminaries of a reference to the Tribunal of Arbitration at The Hague.

Before the signature of an agreement for reference to the tribunal, it will be necessary that the claims in the first category should, as in the case of a direct settlement, be disposed of by an immediate payment. The other claims, including those for injury to property and the claims of the bondholders, would be submitted to the tribunal on the conditions laid down in the memorandum of the 23d December.

There is another point which you should take an early opportunity of mentioning to Mr. Bowen. The establishment of a blockade created ipso facto a state of war between Great Britain and Venezuela, involving, it might possibly be contended, the abrogation of any treaty existing between the two countries. In these circumstances, you should suggest an exchange of notes between your excellency, as His Majesty's representative, and Mr. Bowen, as representative of the United States of Venezuela, to the effect that it is agreed that the convention between Great Britain and Venezuela of the 29th October, 1834, which adopted and confirmed (*mutatis mutandis*) the treaty of the 18th April, 1825, between Great Britain and the State of Colombia, shall be deemed to be renewed and confirmed, or, if the Venezuelan Government should prefer, provisionally renewed and confirmed pending the conclusion of a fresh treaty of amity and commerce.

It may be convenient that I should recapitulate briefly the instructions contained in the preceding paragraphs.

1. If an arrangement is concluded for a direct settlement:

(a) Claims arising out of the seizure and plundering of British vessels and the outrages on their crews and the maltreatment and false imprisonment of British subjects must be at once satisfied.

(b) Other claims for compensation, including the railway claims and those for injury to or wrongful seizure of property, must be met either by an immediate payment to His Majesty's Government or by a guaranty adequate, in your opinion, to secure them. These claims can, if this be desired, be examined by a mixed commission before they are finally liquidated.

(c) A fresh arrangement must be entered into by the Venezuelan Government in order to satisfy the claims of the bondholders, and this arrangement must include a definition of the sources from which the necessary payments are to be provided.

2. If recourse is had to the tribunal at The Hague:

(a) Immediate payment must be equally made of the claims in the first category.

(b) The other claims, including those of the bondholders, will be referred to the tribunal on the conditions laid down in the memorandum of the 23d December.

In either case there must be an exchange of notes renewing the convention of the 29th October, 1834.

On learning that the negotiations have resulted in an agreement fulfilling the above conditions, His Majesty's Government will at once give orders that the blockade of the Venezuelan ports by His Majesty's ships shall be raised. They will also be prepared to restore the vessels of the Venezuelan navy which have



been seized, and, further, to release any other vessels captured under the Venezuelan flag on receipt of a guaranty from the Venezuelan Government that they will hold His Majesty's Government indemnified in respect of any proceedings which might be taken against them by the owners of such ships or of goods on board them.

All obstacles to the renewal of diplomatic intercourse will then have been removed, and His Majesty's Government will be happy to reestablish those friendly relations between Great Britain and Venezuela which previously existed, and which they sincerely desire to resume.

I am, etc.,

LANSDOWNE

In accordance with these instructions, Sir M. Herbert notified to Mr. Bowen on the 23d January the terms on which the blockade would be raised:

*Sir M. Herbert to Mr. Bowen.*

BRITISH EMBASSY,

*Washington, January 23, 1903.*

DEAR MR. BOWEN: Immediately after you left the embassy on the 20th instant I telegraphed my Government your formal request that the blockade of the Venezuelan ports be raised before the commencement of the negotiations in Washington.

I have received a telegram from Lord Lansdowne in reply setting forth the conditions which must be accepted by the Venezuelan Government before his lordship can comply with your request. They are as follows:

1. The claims (small in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews and the maltreatment and false imprisonment of British subjects must be satisfied at once.

2. The other claims for compensation, including railway claims and those for injury or wrongful seizure of property, must be met by an immediate payment to His Majesty's Government or by a guaranty adequate to secure them. These claims can be, if desired, examined by a mixed commission.

3. An arrangement must be entered into to satisfy the claims of the bondholders, including a provision for definite sources of payment.

4. There must be an exchange of notes between His Majesty's Government and that of Venezuela renewing the convention of the 29th October, 1834.

On learning that the negotiations have resulted in an agreement fulfilling the above conditions, His Majesty's Government will at once give orders that the blockade of Venezuelan ports shall be raised.

I hope to receive my full instructions and all information relating to them to-morrow, when I shall be in a position to explain any points in connection with the above conditions which may not seem clear to you.

Believe me, etc.,

MICHAEL H. HERBERT.

It will be observed that His Majesty's Government insisted on immediate payment of the first-rank claims and on the satisfaction of the other claims after an examination by a mixed commission if desired, by immediate payment or by a guaranty adequate to secure them.

These conditions were unreservedly accepted by Mr. Bowen. Indeed, he could not do otherwise in view of the fact that the assent of

the President of Venezuela had been already given to them. This acceptance was recorded in the following letter:

*Mr. Bowen to Sir M. Herbert.*

WASHINGTON, *January 23, 1903.*

DEAR SIR MICHAEL: In answer to your letter of to-day, stating the conditions on which Great Britain will raise the blockade of the Venezuelan ports, I have the honor to inform you that I accept those conditions, as they are substantially the same as those already accepted by the Venezuelan Government.

I therefore request that your Government give orders at once to have the said blockade raised.

Believe me, etc.,

HENRY W. BOWEN.

The whole of the subsequent negotiations were, therefore, subject to the governing condition that adequate security should be provided for the blockading powers.

On the same day Mr. Bowen made the specific proposal that the security to be given should be 30 per cent of the receipts of the custom-houses of La Guaira and Puerto Cabello.

17. Venezuela, therefore, has expressly agreed to provide security of sufficient amount to insure the payment of the claims of the blockading powers within a reasonable time, and has specified the 30 per cent of the customs receipts of the ports of La Guaira and Puerto Cabello as the security to be provided.

Subsequently to that agreement, however, it has been alleged that she can not perform her promise because her other creditors have a right, both as against herself and as against the blockading powers, to insist on sharing in any security that may be granted to the latter powers in pursuance of this agreement. The question whether according to the principles of international law any such right exists in the circumstances of this case is the main question to be decided by this court. Indeed, if it be held that no such right exists, then there is no other question for decision.

18. It has been shown that the claims of the other creditor powers had not entered into the discussion between Venezuela and the blockading powers up to the time of the acceptance by Venezuela of the conditions insisted on by those powers. But when the specific proposal put forward by Mr. Bowen at Washington was inquired into, it became apparent that he intended to propose that the 30 per cent of the customs receipts of the two ports should be shared among all the creditor powers alike. This was a matter of no moment to His Majesty's Government, provided that the share payable to the blockading powers would be sufficient to insure the satisfaction of their claims within a reasonable period in accordance with the agreement. Further information was asked for on this point, and it then appeared that the proportion of the receipts proposed to be assigned

would be insufficient for this purpose. Lord Lansdowne accordingly instructed Sir M. Herbert to insist on the rights of the blockading powers to security of adequate amount.

[Telegram.]

*The Marquis of Lansdowne to Sir M. Herbert.*

FOREIGN OFFICE, *January 26, 1903.*

Although we shall certainly not interpose vexatious difficulties, and earnestly desire to arrive at an early settlement, we must have further explanation with regard to the Venezuelan proposal contained in your telegram of the 25th instant. On the following points we should be glad of further information:

It is understood that £213,000 is the sum which 30 per cent of the customs of the two ports would yield, and that this amount is intended to meet not only the claims of all the powers for compensation, but the entire foreign debt of Venezuela, which amounts to £5,742,000. The claims of the three powers engaged in the blockade will reach nearly £900,000, and those of nonblockading powers will reach some £1,148,514 in amount.

If only £213,000 a year is available, it is obvious that many years will elapse before the whole of the above liabilities are extinguished. In these circumstances the interest of the creditors would be far from assured, considering the insecurity of affairs in Venezuela.

We consider that the claims of the powers engaged in the blockade should not rank on the same line with other claims for compensation or by bondholders, and that some special arrangement should be made with regard to the former.

A portion of the revenue of the two ports might possibly be set apart under an arrangement by which the extinction of British, German, and Italian claims within, say, five years, would be provided for. It is presumed that this could be arranged without the other creditor powers, whose interests we have undertaken to respect, being injuriously affected.

We shall be prepared at once to move the German and Italian Governments to join with us in raising the blockade, in the event of a satisfactory arrangement on these lines being made.

It was subsequently explained that the customs receipts were to be exclusively devoted to paying off claims for compensation, and were not to be allocated to the foreign debt, but even in that case, on the figures then before the parties, there must have been a delay of ten years at least before the claims were completely satisfied. In fact, however, the amount paid over since the date of the protocols has been considerably less than the estimate put forward at that time. During the six months ending August, 1903, the total received has been some £85,000, and at that rate the annual yield will be £170,000 only, and not £213,000. On the other hand, the claims of the other creditor powers are very largely in excess of the estimate. They amount in all to some £7,000,000. These claims have not all been considered by the mixed commission, and it is not possible to estimate the amounts which will eventually be allowed; but several large sums have already been awarded. Belgium, for instance, has obtained awards for £435,949, Mexico for £102,000, and Spain for £78,000. It is obvious, therefore, that if all the powers are to share equally, the amount

payable annually to the blockading powers will be wholly insufficient to effect the discharge of their claims within any reasonable period.

19. Mr. Bowen, however, declined to accede to the representation of Lord Lansdowne. He based his refusal on the broad ground that the other creditor nations had a right to equal treatment, and that this right would be upheld by The Hague Tribunal.

*Mr. Bowen to Sir M. Herbert.*

WASHINGTON, January 27, 1903.

DEAR SIR MICHAEL: Please do not fail to state in your cablegram that I can not consent to give preferential treatment to the allied powers, because if the matter were referred to The Hague all the creditor nations would be put on the same footing. The allied powers, therefore, should not try to press the point, as it would be unfair to do so.

Believe me, etc.,

HERBERT W. BOWEN.

Mr. Bowen further elaborated his objections in the following memorandum, which is to be found in the Venezuelan appendix, and is recorded in a telegram from Sir M. Herbert set out in the British appendix, dated the 29th January:

I object to paying first the claims of the allied powers and the claims of the other nations afterwards, because—

1. I think it is unjust, unfair, and illegal to tie the hands of the said other nations for the period of five or six years that it would take to pay the claims of the allied powers.

2. I recognize that brute force alone can be respected in the collection of claims, I should encourage the said other nations to use force also.

3. If the allied powers wanted preferential treatment they should have asked for it in the beginning, and should not now propose it after I understood that all the conditions of the allied powers had been stated.

If, however, this demand for preferential treatment is raised simply as a point of honor, I am willing to agree that the entire 30 per cent be paid to the allied powers for the first month.

It seems hardly necessary to point out that the third reason given in this memorandum is founded on a misapprehension. It is true that the blockading powers had not previously demanded "preferential treatment" in terms, but that was because in the first instance there had been no suggestion that the other creditor powers had any right to interfere in the matter at all, and questions of preference only arise when there are competing claimants. But it has been shown that from the very first the blockading powers had demanded security adequate to provide for the satisfaction of their claims within a reasonable time, irrespective of the claims of other powers; and that if the claims of other creditor powers are admitted at all, effect can only be given to the acceptance by Venezuela of that demand by awarding preferential treatment to the blockading powers.

20. Lord Lansdowne replied by proposing to refer the question as to the rights of the other creditor nations to this tribunal.

[Telegram.]

*The Marquis of Lansdowne to Sir M. Herbert.*FOREIGN OFFICE, *January 30, 1903.*

With reference to my telegram of the 28th instant, and to your excellency's telegram of the 29th instant, I have to recall that on the 27th ultimo the United States chargé d'affaires told me that the President was glad to be able to inform the Governments of Great Britain, Germany, Italy, and Venezuela that they had all in principle agreed to the proposal to refer the questions pending to the arbitration tribunal at The Hague. Although unable himself to act as arbitrator, the President was good enough to say that he would gladly hold himself at the disposition of the powers concerned if he could be of any further service in arranging the preliminaries of such a reference.

The President of Venezuela subsequently commissioned Mr. Bowen to proceed to Washington with a view of coming to an arrangement either for an immediate settlement of the claims or for concerting preliminaries for their submission to the arbitration of the tribunal at The Hague.

There appears to be no doubt that the blockade could have been raised within a very few hours if Mr. Bowen had expressed a preference for the second of the above alternatives. The preliminary conditions on which Great Britain and Germany had insisted had been agreed to by President Castro, including those relative to the claims of the first line, i. e., claims arising, for the most part, out of overt acts of spoliation and violence, of which, during recent years, British subjects and Germans have been the victims.

His Majesty's Government were ready to accept in full settlement of the British share of these claims the sum of £5,500 in cash, while Germany would accept a similar amount in cash, on condition of receiving priority as regards the sum of about £61,000, the balance of the German claims. Consequently, in addition to the conditions already agreed upon, only an immediate cash payment of £11,000 and prior security for £61,000 was required to make possible an immediate appeal to the tribunal at The Hague and the termination at the same time of the blockade. Mr. Bowen, however, preferred to make an attempt to bring about a direct settlement. His Majesty's Government have no desire to minimize the weight of his reasons for this, but the result has been that a state of affairs has unfortunately been prolonged which it was the earnest wish of His Majesty's Government to terminate.

It seems that Mr. Bowen has not thought it possible to come to any arrangement which would not place on precisely the same footing all the powers who have claims for compensation from Venezuela.

This is, in the opinion of His Majesty's Government, quite at variance with international practice and with principles of equity, and, except at the instance of some competent tribunal of arbitration, they could not assent to it.

It must be remembered that neither the President of the United States in his communications with His Majesty's Government nor any of the blockading powers, nor, so far as I am aware, President Castro, have ever put forward a proposal of this nature.

The preferential treatment for which the blockading powers have asked is not, it must be further remembered, one by which either the resources at the disposal of the Venezuelan Government for the payment of the external debt would be exhausted or by which the so-called "diplomatic debt," which amounts to only 5.2 per cent of the total customs revenue of Venezuela, would be interfered with. The other powers will, without doubt, under the arrangements proposed by the blockading powers, be in a much more favorable position than they ever were

before, and that, too, without incurring any of the trouble or expense involved in the naval operations which have been undertaken.

His Majesty's Government are of opinion, in these circumstances, that the method by which hostilities may be most expeditiously terminated would be by the reference of the question in dispute to the tribunal at The Hague, subject to the conditions already mentioned, unless, indeed, the President of the United States, in the interests of a prompt settlement, were to consent to decide the only point which seems to be an obstacle to the powers immediately interested arriving at a complete agreement. It is unnecessary to say that His Majesty's Government, in the event of the President consenting to adopt this course, would, with feelings of the utmost gratification, accept his good offices. In the event of the President being unable to do so, His Majesty's Government hope that he will give his assistance, in accordance with the offer quoted above, with a view to arrange the preliminaries for a reference to the tribunal at The Hague, and thus enable the powers to put an end to the blockade at once.

I have communicated to the German and Italian ambassadors here the substance of this telegram, and you may inform your German and Italian colleagues of the purport of these instructions.

And in a telegram of the 1st February he further explained the views of His Majesty's Government:

[Telegram.]

*The Marquis of Lansdowne to Sir M. Herbert.*

FOREIGN OFFICE, *February 1, 1903.*

It is not the wish of His Majesty's Government to place any obstruction in the way of a reasonable arrangement between the Government of Venezuela and other powers. At the same time, they consider it essential that priority should be given to the first rank of claims of the blockading powers, and that provision should be made for extinction, within a reasonable time, of the second rank of claims.

Subject to the fulfilment of these conditions, the terms which Venezuela may find herself able to offer to the other powers are of no concern to His Majesty's Government, even if as advantageous as those obtained by the latter; but, except as the result of arbitration, they can not assent to the doctrine that, in cases like the present, identic treatment should be accorded to belligerents and nonbelligerents.

On the 2d February Mr. Bowen replied, refusing certain proposals for settlement which had been suggested, but which are not material to the present question, but assenting to refer the point in dispute to this tribunal:

*Mr. Bowen to Sir M. Herbert.*

WASHINGTON, *February 2, 1903.*

DEAR SIR MICHAEL: I have given due consideration to your Government's proposition that two-thirds of the 30 per cent of the customs receipts of La Guaira and Puerto Cabello be given to the allied powers, and that the remaining third be paid to the peace powers. That proposition I must decline. I can not accept, even in principle, that preferential treatment can be rightly obtained by blockades and bombardments. It would be absolutely offensive to modern civili-



zation to recognize that principle and to incorporate it into the law of nations, as it would have to be if the allied powers and the peace powers should agree to it and acknowledge it. Furthermore, that proposition is objectionable because it would keep the allied powers allied for a period of six years. Venezuela can not, I am sure, be expected to encourage the maintenance of alliances against her. On this side of the water we want peace, not alliances.

Now, as the question of preferential treatment is the only one on which we have not agreed, I hereby propose that we leave that question to The Hague. What we have already agreed upon we can hold to and stand by. We need only to add to it that we have decided to submit the question of preferential treatment to The Hague.

If this proposition is accepted (and I do not see how it can be declined), there would be, of course, no reason to continue the blockade.

This solution of the controversy is honorable to all parties, and I beg you to communicate it to your colleagues at your earliest convenience.

I am, etc.,

HERBERT W. BOWEN.

The protocol of the 13th February was thereupon signed providing for the reference to this tribunal of the question "as to the rights of Great Britain, Germany, and Italy to a separate settlement of their claims."

(d) *The situation at the time of the signing of the protocols.*—  
21. It is desired in conclusion of this statement of facts to call attention to the positions of the respective parties at the time the protocols with the blockading powers were signed, because the situation existing at that time is a consideration of cardinal importance in determining the question now at issue. The position was as follows:

(1) Venezuela had been suffering under the effects of the blockade for some two months, and the pressure was becoming more severe day by day. The whole of the effective portion of her small navy had been captured by the allies, and a large number of Venezuelan trading ships were held by them as prize. The negotiations to which reference has been made show, at every stage, the importance attached by Venezuela to the cessation of the blockade and her anxiety to induce the allies to raise it.

(2) The blockading powers were in the position of successful belligerents. They had made war against Venezuela, and that country was no longer in a position to oppose them. They had obtained an agreement for the assignment of security sufficient to satisfy their claims within a reasonable time, and they were in a position to insist by force, had they so desired, on compliance with any demands they might elect to make.

(3) The other creditor powers made no arrangement with Venezuela in regard to the giving of any security until after the signing of the protocols of the blockading powers. A list of the protocols signed with the various powers is to be found on page 202 of the Venezuelan Appendix. It will be seen that the earliest arrangement made by Mr. Bowen with one of the other creditor powers (the United States) was

on the 17th February, and the latest (that with Spain) on the 2d April. At the time in question, therefore, they neither had any such arrangement nor were they in a position to put any pressure on Venezuela in order to obtain one. The latter country had no immediate object in making terms with them; she had nothing to gain, and they had nothing to give.

It is also important to bear in mind that the creditor powers were estopped from taking any objection to the action of the blockading powers at this time. They had known from the first that the object of those powers had been to obtain satisfaction for their own claims, and their own claims alone, and yet they had neither made any protest against that action, nor had they sought to participate in it in order to enforce their own demands. It is only necessary in this counter case to deal specifically with the action of the Government of the United States of America, and in their case it is clear that they expressly assented to the course pursued by the blockading powers.

On the 11th November Lord Lansdowne instructed Sir M. Herbert to communicate to Mr. Hay the intentions of His Majesty's Government.

[Telegram.]

*The Marquis of Lansdowne to Sir M. Herbert.*

FOREIGN OFFICE, November 11, 1902.

I should wish your excellency to obtain an interview with Mr. Hay at an early date, and to make a communication to him in the following terms:

His Majesty's Government have, within the last two years, had grave cause to complain of unjustifiable interference on the part of the Venezuelan Government with the liberty and property of British subjects. Every effort was made, but without result, to obtain an amicable settlement. In June last a British ship was overhauled on the high seas, and eventually confiscated, on a bare suspicion of having carried arms to Venezuela.

It was felt that a continuance of such conduct could not be tolerated, and His Majesty's minister at Caracas was instructed to record a formal protest, and to intimate clearly to the President and minister for foreign affairs that unless explicit assurances were received that such incidents should not recur, and unless full compensation were promptly paid whenever shown to be justly due, His Majesty's Government would take such steps as might be necessary to exact the reparation which they were entitled to demand in these cases, as in others where endeavors to obtain redress had proved of no avail.

The reply was wholly unsatisfactory, and practically ignored the remonstrances of His Majesty's Government.

In view of the nature of this reply, His Majesty's Government are compelled to consider what course it may be necessary to pursue in order to enforce their demands. But, before proceeding to ulterior measures, they have decided to intimate their regret at the manner in which their representations have been received, and to state that the serious complaints put forward can not be disposed of by a refusal to discuss them. If such a refusal is persisted in, it will become their duty to consider what steps they should take for the protection of British interests. They are, however, unwilling to exclude at

once all possibility of proceeding with negotiations, and are therefore ready to consider any further communication which the Venezuelan Government may be prepared to make.

Mr. Hay stated in reply that the United States Government could not object to the action proposed.

[Telegram.]

*Sir M. Herbert to the Marquis of Lansdowne.*

WASHINGTON, November 13, 1902.

I communicated to Mr. Hay this morning the substance of your lordship's telegram of the 11th instant.

His excellency stated in reply that the United States Government, although they regretted that European powers should use force against Central and South American countries, could not object to their taking steps to obtain redress for injuries suffered by their subjects, provided that no acquisition of territory was contemplated.

It was impossible, therefore, at this time for the United States to claim to interfere with the demands of the blockading powers, or to assert that the blockading powers could not come to a separate settlement of their claims with Venezuela.

#### CONTENTIONS OF HIS MAJESTY'S GOVERNMENT.

22. The material facts have now been stated for the information of the court, and it is submitted on those facts that the other creditor powers have no right, according to any known principle of international law, to share in this security to the prejudice of the blockading powers by whose efforts it was obtained, or to prevent a separate settlement of the claims of the latter powers.

23. It is established by the evidence to which attention has been directed, that Venezuela expressly agreed to assign to the blockading powers a portion of these customs receipts, sufficient in amount to discharge their claims within a reasonable time, and it has been shown that this agreement can not be fulfilled unless the whole of the 30 per cent now in question is allocated to that purpose, and to that purpose only. Venezuela was therefore bound to give preference to the claims of the blockading powers, for she could not otherwise fulfill the agreement into which she had entered. It may be that after these claims have been discharged the other creditor powers will be entitled, under the provisions of the protocols made with them, to call upon Venezuela to allocate these receipts in future to the discharge of their own claims. That is a matter with which His Majesty's Government have no concern. Their contention is that the other creditor powers have no right to prevent Venezuela from fulfilling the agreement into which she has entered, and that therefore they have no right to interfere with the payment of the whole receipts to the blockading powers until the claims of those powers are discharged in full.

24. It is further contended that, even irrespective of such an agreement, the blockading powers were entitled to a separate settlement of their claims, and that the other creditor powers had no right to interfere with that settlement.

The blockading powers had grievances against Venezuela, and they demanded from her redress for those grievances. Venezuela refused to take their demands into consideration, or to afford them any redress. The only course open to them, therefore, unless they were prepared to acquiesce in that refusal, was to resort to force; there is no other remedy available for nations. They accordingly took the action which has been described, and, in the view of international law, that action amounted to war.

The result of these measures of force was that the security now in question was obtained from Venezuela. It is indeed suggested in the Venezuelan case, and the suggestion has been repeated by counsel, that Venezuela would have made the same assignment in any event. But no particle of evidence has been adduced in support of that suggestion, and it is submitted that the documents to which reference has been made, establish beyond the possibility of doubt that this security was given in consideration of the raising of the blockade, and that if there had been no blockade, or other like coercion, there would have been no security.

In these circumstances His Majesty's Government contend that the other creditor powers have no right to share in this security to the prejudice of the blockading powers. The charge demanded by the latter powers from Venezuela does not affect any other charges on the customs receipts held by other nations; it is independent of the security assigned for the diplomatic debt. It can not, therefore, be said that any vested interest is impaired. The other creditor powers had no charge on this security before the blockade and they can not have been placed in a better position by the action of the blockading powers than they were in before. The claim, therefore, of the other creditor powers to have an equal share in this security must, in effect, be based on the assumption that one nation can not take action to obtain satisfaction from another nation in respect of its own grievances alone, but that it can only act as agent or trustee for all powers who have claims on the nation against whom that action is directed. In other words, the nation which has undertaken the risk and borne the burden of hostilities can reap no special advantage from that action. It alone must suffer the loss and bear the expenditure occasioned by the war, but it can obtain no advantages from those losses or from that expenditure except such as it must share with other powers. In the present case the belligerent operations of the blockading powers were not of a severe character; no life was lost on either side; no troops were landed on Venezuelan soil. But the principle,

if there be such a principle, must apply equally in cases where hostilities have been prolonged and have entailed heavy sacrifices both in blood and treasure. The mere statement of such a proposition is sufficient to demonstrate its falsity. War and other measures of coercion are processes put in force by individual nations for their own purposes. They confer no advantages and no rights on third parties in circumstances such as these.

The proposition becomes the more extravagant in such a case as the present, because the other creditor powers have never made any protest against the action of the blockading powers. Some of them, indeed, including the United States of America, as has been pointed out, expressly assented to it. They knew that action was taken to obtain satisfaction from Venezuela for the claims of the blockading powers, and of the blockading powers alone; but they neither made objection to it nor claimed to participate in it in order to enforce their own demands. They have never made any offer to bear any part of the costs of the blockade or of the other expenses incurred by the blockading powers. They stood by and allowed the latter powers to run the risk and bear the expenses which were necessary to obtain the security, and they can not, it is submitted, on any principle of law or equity, be permitted now to share in that security to the prejudice of those powers by whose efforts alone it was obtained.

It is to be observed that the proposition that all creditors are entitled to equality of treatment, irrespective of the action they may have taken or neglected to take in support of their claims, must apply equally to cases in which settlements are obtained by diplomatic pressure as to those in which there has been a resort to force. It can not be that powers who have been compelled to resort to force are in a worse position than those who have more easily obtained the redress they demanded. This result is equally opposed to the usage of nations. It was the undoubted right of Venezuela to make such arrangement as she pleased with any particular creditor, provided she did not thereby affect existing charges, and it has been shown that there were no charges that could be affected by the assignment to the blockading powers in this case. Indeed, Venezuela has made separate arrangements with several of the creditor powers who now advance this doctrine of equality of treatment. As late as April, 1902, for instance, Venezuela entered into a separate agreement with France for the settlement of French claims. Venezuela never suggested on those occasions that she had no right to make a separate settlement with any one creditor.

25. In addition to these arguments, it is submitted that the circumstances existing at the time of the blockade afford per se a sufficient reason for the preference of the claim of the blockading powers. It was essential for Venezuela at that time to satisfy the demands



of those powers, in order to secure the raising of the blockade. She had no immediate motive for satisfying the claims of the other creditor powers. The blockading powers had something of vital importance to Venezuela to give in exchange for the assignment to them of sufficient security; the other creditor powers had nothing to give. In such circumstances, the blockading powers would appear to be clearly entitled to priority of treatment. It must not be forgotten that they were in a position to continue the blockade until they had enforced compliance with their demand, and that they can not be prejudiced by the fact that they were willing to discontinue hostilities at once on condition that the question was referred to this court.

26. The considerations which present themselves, if the matter be looked at from the point of view of equity and common fairness, rather than that of law, and the analogies which are to be found in those principles of municipal law which are common to most systems of jurisprudence, are discussed in the British case, and the attention of the tribunal is respectfully invited to the argument on this point which is there set out.

#### CONTENTIONS OF VENEZUELA AND OF THE UNITED STATES OF AMERICA.

27. The main contention put forward in the Venezuelan case and in the speech of counsel is in substance that the war was unjust and the conduct of the blockading powers in resorting to force "unmeritorious," and that therefore the blockading powers should be deprived of any advantage which they might otherwise have obtained by their action over other powers. The first 115 pages of the Venezuelan case are solely devoted to this contention, and in the speech of Mr. MacVeagh, which follow closely on the lines of that case, no stress was laid on any other argument. It appears to be admitted that this contention is not based on any known principle of international law, but it is said that the question is one of "ethics," and that this tribunal must decide on the "ethical" merits of the conduct of the blockading powers, and must forbid them to enjoy any greater advantage than the other creditor powers if their conduct does not conform to some suggested standard of international morality.

28. In support of this argument a vehement attack has been made on the conduct of His Majesty's Government, while on the other hand a detailed defense has been presented of the action of Venezuela.

It has been already stated that His Majesty's Government are ready to give the fullest explanations of the course pursued by them, if in the opinion of this tribunal it should be in any degree material to the present issue, but that, as at present advised, they have not thought it proper to enter on any prolonged discussion of these matters.



They desire, however, in the interests of international arbitration, to record a respectful protest against one argument which has been put forward before this tribunal. It is said that Venezuela had just cause for irritation against Great Britain, owing to the proceedings in the British Guiana boundary arbitration. Complaint is made that Venezuela was not allowed to appoint a single representative upon that arbitration, and it appears to be suggested that the result would have been different had she been so represented. But, in fact, Venezuela was represented. The arbitration treaty was made directly between Great Britain and Venezuela, and provided that each of those countries should be represented by two arbitrators, and that the umpire should be selected by the arbitrators, or, failing their agreement, by His Majesty the King of Sweden and Norway. This procedure was followed, and Venezuela was represented by two arbitrators. The question in dispute was elaborately discussed, and the award of the arbitrators was unanimous. Venezuela, therefore, was fully represented, and her contentions were fully considered. It would be a serious blow to the cause of arbitration if arguments such as these were to be allowed to prevail before this court.

29. It is submitted that if ever war was justified there was justification in the present case. There had been repeated acts of aggression by Venezuela and repeated refusals by her to afford any redress, or even to take the matters complained of into consideration. It was only after every effort to obtain a settlement by peaceful means had been exhausted that His Majesty's Government were compelled to resort to force.

But the broad answer to the contention of Venezuela is that not only is it unfounded in fact, but that whatever may have been the conduct of the blockading powers, international law does not, and can not, decide on the justice or injustice of war. In the writings of the earlier jurists, in days before the limits of international law had become fully defined, there are to be found disquisitions on many matters which have since been relegated to the domain of morals, and among them on the causes which alone can justify war. But it has from the first been recognized that international law can make no distinction between belligerents who have taken up arms for a just cause and those who have made war unjustly. It has never been contended before the present case that the rights of belligerents depended on the merits or demerits of their conduct judged from the standpoint of ethics. Indeed, it is obvious that international law has no rules by which such a question could be determined. This is clearly stated by Hall in the following passage:

SEC. 16. As international law is destitute of any judicial or administrative machinery, it leaves States which think themselves aggrieved, and which have exhausted all peaceable methods of obtaining satisfaction, to exact redress for

themselves by force. It thus recognizes war as a permitted code of giving effect to its decisions. Theoretically, therefore, as it professes to cover the whole field of the relations of States which can be brought within the scope of the law, it ought to determine the causes for which war can be justly undertaken; in other words, it ought to mark out as plainly as municipal law what constitutes a wrong for which a remedy may be sought at law. It might also not unreasonably go on to discourage the commission of wrongs by investing a State seeking redress with special rights as by subjecting a wrongdoer to special disabilities.

\* \* \* \* \*

The second end international law does not even endeavor to attain. However able law might be to declare one of two combatants to have committed a wrong, it would be idle for it to affect to impart the character of a penalty to war, when it is powerless to enforce its decisions. The obedience which is paid to law must be a willing obedience, and when a State has taken up arms unjustly it is useless to expect it to acquiesce in the imposition of penalties for its acts. international law has consequently no alternative but to accept war, independently of the justice of its origin, as a relation which the parties to it may set up if they choose, and to busy itself only in regulating the effects of the relation. Hence both parties to every war are regarded as being in an identical legal position, and consequently as being possessed of equal rights.

Rivier says on this point:

3. La distinction de la guerre juste et de la guerre injuste est juridiquement sans valeur, tout en pouvant avoir une haute portée morale et par là même politique. Quelque importance que doive attacher un belligérant au fait d'avoir pour lui l'opinion publique des nations et les sympathies des gens de bien, aucune différence n'existe entre les lois de la guerre injuste et celles de la guerre juste, et les effets de l'une et de l'autre sont identiques.

It would be indeed regrettable if this tribunal were to be compelled to decide questions of such a character as that suggested. It is certain that no belligerents would lay down their arms and refer their differences to this tribunal if the decision of the question in dispute were to depend, not on the application of any principle of law, but on the opinion the members of the court might entertain as to the ethical merits or demerits of their conduct in resorting to hostilities. This tribunal was established to decide questions of a legal nature, on the basis of respect for law, and not questions of ethics.

30. But in the present case there is a further answer which is, as is submitted, equally conclusive of this contention. The reference to this court was made on the terms of the protocols of the 13th of February, which are binding on all parties; and the jurisdiction of the court depends solely on those protocols and on the ancillary agreement of the 7th May. Article 1 of the British protocol contains an express admission by Venezuela that the claims preferred by His Majesty's Government are just. The submission to this tribunal is, therefore, made on the basis that the British claims are just, and no party is at liberty to dispute that basis.

31. It is to be observed, moreover, that the contention raised by

Venezuela is not one that can be supported by the other creditor powers. They are claiming a share in the security obtained by the action of the blockading powers, and it is hardly for them to say that that action was contrary to the law of nations. They can hardly allege that the action was illegal while they claim to share in the result.

The same observation arises in regard to much of the criticism made by Venezuela on the claims of the blockading powers, especially on those for damages caused during insurrections. The justice of the British claims is admitted, and the amounts are to be settled by arbitration; but the claims of the other creditor powers are of a similar nature to the British claims, and if the criticism be sound, it must apply with equal force to the claims of the other creditor powers.

It is also to be noticed, in view of some of the arguments used in the Venezuelan case, that no one of the other creditor powers made any offer to mediate or made any suggestion of arbitration before the commencement of hostilities.

32. But, in fact, the other creditor powers, with the exception of the United States of America, do not adopt this contention of Venezuela that the war was unjust. They rely upon other arguments which are dealt with in a separate counter case.

It is not therefore thought necessary to dwell further on this point, but it is proposed to pass on to some subsidiary arguments which are to be found in the Venezuelan case, and in the supplementary memorandum of the United States.

33. The remaining contentions in the Venezuelan case are summarized on pages 115 to 117, and it may be convenient to deal with them in the order in which they are there treated.

(1) It is difficult to grasp the exact meaning of this argument. In fact, as has already been demonstrated, the blockading powers did believe that their second-rank claims were entitled to be guaranteed by security of adequate amount; they insisted on that demand from the first, and Venezuela assented to it.

(2) This argument is based on an inaccurate assumption of fact. The blockading powers never assented to the terms stated. This is abundantly clear from the correspondence already set out at length, and it is not necessary to do more than to refer to Lord Lansdowne's telegram of the 28th January, in which, in answer to this proposal, he said:

His Majesty's Government can not accept a settlement which would force them to place their claims on the same footing with those of the nonblockading powers.

All that His Majesty's Government agreed to was that the validity of the claim made on behalf of the other creditor powers should be submitted to the tribunal.

(3) The third argument for the equal treatment of all nations is

deduced from the maxim that "equality is equity." This argument is more fully developed in the cases of the other powers, and is replied to there in greater detail. It is sufficient to say that it can have no application where, as in this case, a claim is put forward to share in a security which has been obtained solely by the exertions of the blockading powers.

(4) Reliance is placed on the precedent of China, and it is admitted in an earlier part of the Venezuelan case that the researches of counsel have not been able to discover any other precedent. But the case of China is essentially different from the present case. China did not offer to assign a specific sum to be divided among her creditors. On the contrary, all the powers interested, including those who had not taken part in the military operations, assessed the total of their claims, and demanded payment from China of the whole amount. China thereupon agreed to pay the sum specified by the powers. No question of any right to equality of treatment was raised or could be raised in those circumstances, and it is therefore impossible to hold that the case of China has created any precedent applicable to the present case. The fact that no objection was there raised by the blockading powers to the satisfaction by China of other claims can not be used in support of the contention now put forward that other powers have a right to share in a specific fund to the prejudice of the belligerent powers.

(5) (6) (7) The remaining arguments are based on the alleged misconduct of the blockading powers from a moral, or, as it is called in other places, from an "ethical" point of view. This contention has been already sufficiently discussed, and it is not necessary to say more about it. The allegations of fact are, as is submitted, incorrect, and, even if correct, would be irrelevant.

34. The main arguments presented by Judge Penfield in the supplementary memorandum of the United States are sufficiently met by the observations which have already been made in reply to similar contentions in the Venezuelan case. It is desired only to make a brief comment on the following additional points:

(1) It is stated on page 12 that there are other precedents in favor of the claim of the other creditor powers to equality of treatment, and these precedents are set out in the appendix, pages 41-43. It will be seen, however, on reference to those pages that the cases referred to have no bearing on the present question.

Claims of foreign vessels to receive the same treatment in respect of light dues in Haiti as Haitian vessels, or claims of foreign bondholders to receive the same treatment as native bondholders in Haiti or Guatemala, may be proper subjects for diplomatic representations, but they are not based on any legal claim to equality of treatment such as is raised in the present case. It is certain that, apart from

treaty obligations, there could be no legal right to prevent the Government of Haiti from remitting the light dues in favor of Haitian vessels.

(2) On pages 12-15 it is suggested that the United States would have obtained the same security if the allies had not brought pressure to bear on Venezuela. But there is no evidence of this before the court. Indeed, the only evidence which bears upon the matter is to the contrary effect. On page 13 it is stated that the payments due to the United States from Venezuela are greatly in arrears, and in the only instance cited in support of the suggestion in the Venezuelan case a settlement was only obtained after twenty years of persistent pressure.

(3) On page 19 it is stated that the British protocol requires compensation to be paid for damage caused by insurgents. But this is not the construction put upon it by the British mixed commission, and, in fact, no such claims have been allowed. No British claims of this kind were presented at first, and it was only when it was found that other creditor powers were presenting similar claims that His Majesty's Government allowed them to be put forward. The mixed commission, however, as has been stated, has disallowed them. On the other hand, claims of this nature have been allowed by the mixed commission which adjudicated on the French and Spanish claims.

(4) The question as to the adequacy of the guaranty, raised on page 24, has been already discussed, and it has been demonstrated that the allies from first to last insisted on security of adequate amount. It is stated here that Venezuela had made some promise of most-favored-nation treatment to the other creditor powers. His Majesty's Government have no information on this point, and no such argument is suggested in the cases of the other creditor powers. If, therefore, reliance is placed on this point the fact must first be established by the proper evidence. Moreover, in any case, a claim for most-favored-nation treatment in this matter would not involve a demand to share in any security obtained by the blockading powers, but would, at the utmost, amount only to an intimation that Venezuela would be required to provide a similar security for the claimant.

35. The assertions contained in the argument presented by Mr. Bowen are, in the view of His Majesty's Government, quite unfounded. In particular, there is no ground for the assertion there made as to the motives which induced the allied powers to agree to refer the dispute to this court. It is altogether denied that the allied powers could not have insisted on obtaining a definite assignment of adequate security before raising the blockade. In any case, it is certain that the United States, on whose behalf this argument is now put forward, did not object and, indeed, could not have objected. The Government of the United States had been informed that the



proposed action of the blockading powers was to be undertaken to obtain satisfaction of their own claims, and their own claims alone, and that Government had made no protest. Moreover, they had acted as intermediaries between Venezuela and the blockading powers in the early stages of the negotiations, and were well aware that the blockading powers had demanded security of adequate amount from the very first. They had themselves transmitted these very demands to President Castro. The United States therefore, at least, could not maintain that "the allied powers had trampled on their rights," and it is certain that the situation can not be altered by the fact that the controversy was referred to this court. The blockading powers can not be in a worse position because they consented to discontinue hostilities and submit the determination of their rights to the judgment of this court. Whatever their rights were in the situation existing at the moment before the signature of the protocols, those rights remain the same to-day for the purposes of this case.

#### CONCLUSION.

His Majesty's Government therefore adhere to the reasons stated in the British case, and again submit that the claim of the other creditor powers to share in the security obtained from Venezuela by the action of the blockading powers is not well founded, and that any claim by them to share at all in that security must be postponed to the claims of the blockading powers:

Because—

(1) The Venezuelan Government expressly accepted the condition insisted on from first to last by His Majesty's Government that adequate security should be provided for the satisfaction of the claims of the blockading powers. The reference to this court was made on the basis of that condition, and to that condition it is submitted the court should give effect.

(2) The other creditor powers took no part in the controversy between the blockading powers and Venezuela and can not claim as a matter of right to take any part in the settlement of that controversy.

(3) The other creditor powers purposely abstained from intervening in the action of the blockading powers, and can not, therefore, claim as a matter of fairness or equity to share in the results obtained by that action.

(4) The security in question would not have been obtained at all had it not been for the action of the blockading powers, and therefore the blockading powers are entitled to a prior charge on that security.

(5) In the circumstances existing at the time of the signing of the protocols the blockading powers were entitled to preferential and separate treatment.



## COUNTER CASE OF GREAT BRITAIN IN REPLY TO THE CASES OF THE OTHER NONBLOCKADING POWERS.

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The argument presented on behalf of Venezuela and of the United States of America has been discussed in the preceding counter case, and it is proposed in this counter case to reply to the argument presented in the cases of the remaining creditor powers. The separate treatment of these two arguments will be found convenient, because they are essentially distinct in character. The Venezuelan argument is based almost entirely on the contention that the war was unjust, and that therefore the blockading powers ought not to be allowed to enjoy any advantage over other creditors. In the cases under reply this contention is expressly disclaimed, and it is admitted, in the words of the French case, that—

the various circumstances under which the conflict between the three allied powers and Venezuela arose, as well as the different means which were resorted to, are absolutely outside this contest.

It is not necessary, therefore, to refer here to the statement of facts which is to be found in the former counter case, in so far as that statement deals with the controversy between the parties before the seizure of the Venezuelan gunboats on the 9th December, 1902. The facts as to the action taken on and after that date by the blockading powers, and the narrative of the negotiations which ensued are, however, material to the arguments now under reply, and the tribunal is therefore requested to treat the statement on these points, which is to be found in the preceding counter case on pages 19 to 35, as forming part of the present counter case, in so far as it is necessary so to do.

It is proposed first to discuss the contentions which are common to all the cases under reply, and then to deal with those considerations which affect particular powers only.

1. A difference of vital importance arises at the very outset as to the form of the question which is submitted for the decision of this court. In the cases under reply the question is treated as if Venezuela had made a voluntary assignment for the benefit of her creditors, and as if the onus were on the blockading powers of establishing a right to preferential treatment as against the other creditors.

The blockading powers, on the other hand, contend that they were, at the time of the signing of the protocols, in a position to enforce

compliance with their demands for adequate security; that Venezuela objected that she could not comply with those demands, because, according to law of nations, the other creditor powers had a right to share in any security granted by her to the blockading powers, and that it is the existence or nonexistence of this alleged right which is the question now at issue. In their view, the onus is on the other creditor powers to establish their right to intervene.

2. This difference is not one of mere form; it is a difference on a question of fact which goes to the root of the matter under discussion. It will be found when the arguments under reply are examined that it is assumed in them throughout that the case is to be dealt with in the same way as if it were one of a voluntary assignment by Venezuela for the benefit of her creditors, and of a number of creditors all in a position of equality and having equal rights as regards Venezuela. This assumption underlies the whole argument, and if it be unfounded the contention that the onus of proof is on the blockading powers must fail. It is important, therefore, at the outset to point out that the facts do not warrant any such conclusion. The evidence on these points has been already presented to the court, and it is submitted that that evidence establishes beyond the possibility of doubt that, in the first place, this security was not assigned voluntarily, but that it was obtained solely by the action of the blockading powers; and, secondly, that the blockading powers were, at the time of the signing of the protocols, in a position to enforce compliance with their demands, and that the other creditor powers were not at that time able to put any pressure on Venezuela; and that, therefore, the two sets of creditors were not in a position of equality. Indeed, the assumption that the question is to be dealt with as if this were a case of voluntary assignment, and of creditors in a position of equality as regards their common debtor, can only be sustained if the whole of the events which occurred before the date of the protocols and the facts of the situation existing at that time are completely ignored. On the other hand, the proposition of the blockading powers is entirely consistent with the evidence before the court, and appears to represent the true effect of that evidence.

It is therefore submitted that the contention of the other creditor powers that the onus is on the blockading powers to establish a right to preferential treatment is ill-founded, because it is based on an incorrect view of the facts; and that, on the contrary, the onus is on the other creditor powers to establish their right to share in this security to the prejudice of the blockading powers, by whose efforts it was obtained.

3. The main proposition of law on which the other creditor powers rely is that all nations are entitled to equality of treatment, or, as it is otherwise stated, that "equality is equity." It is perfectly true that

all nations, great or small, are to be regarded as on a footing of equality inter se, but this proposition can not possibly be stretched to the extent of meaning that all nations are to have equal rights in all circumstances, or that equality is always equity irrespective of the question whether the parties concerned are in an equal position or not. There is nothing to prevent one nation from agreeing to confer special privileges on another nation, even though that agreement be prejudicial to the interests of a third nation, provided that no vested rights are affected. One nation, for instance, may obtain a preferential tariff from another nation by treaty or by force, but that gives no right in law to any third nation to insist on equal treatment.

It is equally certain that the doctrine of equality can have no application in cases in which the nations concerned are not in a position of equality. A neutral, for instance, can not claim the privileges of a belligerent. A nation which has nothing to offer in exchange for a concession is not in the same position as a nation which can confer signal advantages in return. A creditor who has taken no steps to enforce the payment of his debt is not in the same position as a creditor who has taken successful proceedings against the debtor.

It is obvious, therefore, for reasons which will hereafter more fully appear, that the maxim has no application to the present case.

4. It will be convenient, before entering more fully into the discussion of this alleged principle of equality, to dispose of two topics which might otherwise obscure the question at issue. In the first place, it appears to be suggested in the cases under reply that the rights of the other creditor powers are in some way analogous to those of creditors in bankruptcy. It is important, therefore, to emphasize that this is not a case of bankruptcy. Venezuela is not insolvent; no suggestion to that effect has been made on her behalf, and it is believed that she would emphatically repudiate the imputation. She has seldom, if ever, paid her liabilities except under pressure; but that she can do so if her resources are properly administered is established by the statement of her own counsel. Mr. MacVeagh has stated that Venezuela has been recently negotiating, or attempting to negotiate, a loan of considerable amount on the Continent. He has described her resources in the following terms:

She possesses the most attractive territory on the globe, larger than France and Spain together, watered by the most noble rivers, with every variety of climate the imagination of man can conceive, capable of producing every necessity and every luxury the human race covets, with her mountains filled with precious metals and useful metals, with great prairies stretching through limitless length, where countless herds of cattle can roam and grow strong, with at least four or five ascending grades of climate, from the tropical coast of the sea to the ridges of the loftiest mountains; and growing in her valleys, on her hill sides, in her savannahs, all the products of all the climates of the earth.

This is not language applicable to a bankrupt state.

But even if this were not so, international law knows no such procedure as bankruptcy of a nation, nor does it provide any machinery by which the assets of an insolvent state can be administered or distributed among creditors. Indeed, any such procedure must necessarily be incompatible with the continued existence of the insolvent state as an independent sovereign state. Moreover, the essential basis of all bankruptcy systems is the surrender by the debtor of his whole estate, and here Venezuela has not surrendered her whole estate; she has given a comparatively small charge over a portion, and a portion only, of her customs receipts. The rest of her customs revenue, and the whole of her revenue from other sources, remains unaffected. It is certain, therefore, that analogies drawn from the rights of a creditor in bankruptcy, or on *cessio bonorum* or *venditio bonorum*, can have no application to this case.

In the next place, it is important to bear in mind that the assignment of this 30 per cent of the customs revenues of the two ports of La Guaira and Puerto Cabello does not affect any vested interests of other powers. The foreign claims, which constitute the diplomatic debt, are secured on the "13 per cent of the 40 unities," or, in other words, on 5.2 per cent of the whole customs of Venezuela, and it is obvious that the further charge on the revenues of the two ports of La Guaira and Puerto Cabello now in question does not and could not in any way affect that security.

It will be remembered that the intention of His Majesty's Government to enforce satisfaction from Venezuela was communicated to the French Government as early as the 26th November, and that M. Cambon stated in reply that the French claims were secured by the 5.2 per cent of the customs, and that his Government reserved their rights on this point. He made no other reservation, nor did he make any objection to the proposed action except in so far as that vested interest was concerned. Lord Lansdowne, in acknowledging this communication, undertook that the French claims in respect of the diplomatic debt should not be prejudiced. The Belgian Government made a similar reservation as to a further 10.8 of the whole customs revenues, on which they had a prior charge. But that charge is equally unaffected by the present assignment. This communication was acknowledged in similar terms.

His Majesty's Government are not aware that there are any other vested interests which could be in any way affected by the proposed assignment. No suggestion to that effect has been made either in the Belgian or French cases or in the cases of the other powers. It may, therefore, be taken as a fact that the claim of the other creditor powers is not based on any rights arising out of any prior charge.

5. This is not, therefore, a case in any way analogous to bankruptcy, nor is it a case in which the vested interests of other powers are affected.

It appears to be contended, however, as a general proposition, that even in the absence of these conditions one creditor nation can not make a separate arrangement with a debtor nation, and that no settlement can be valid, according to international law, that does not provide equal treatment to all creditors. It is submitted that such a proposition is wholly erroneous and is altogether opposed to the usage of nations. It matters not for the purposes of this argument whether the separate settlement were induced by diplomacy or compelled by war. The contention must be the same in either case—that there can be no separate settlement as long as other nations have claims against the debtor.

Now, if this principle had ever formed part of the law of nations, it is certain that there would be many occasions on which it had been discussed and many precedents to be found in support of it. There have been numberless instances in which nations by force or diplomacy have obtained the satisfaction of their claims, irrespective of any claims that other nations might have against the debtor State. There have therefore been numberless opportunities on which the question could have been raised. Yet there is not throughout the long history of nations a single instance in which such a claim as this has been put forward, much less allowed. The industry and research of the learned counsel who represent the other creditor powers can produce no precedent, unless the arrangement in China in 1901 be in point. But, in fact, as will presently be explained, the case of China has no bearing on the present question. This observation appears to be of itself fatal to the existence of any such principle as is alleged.

It is submitted that there is no principle of law which interferes with the freedom of contract of States or prevents a State from settling the claims of one creditor alone, provided that no vested interests of other powers are thereby affected. Treaties or agreements between individual powers must in many cases and in many conditions affect the interests of some other power; indeed, a treaty which confers an advantage on one power must often inflict a corresponding disadvantage on another or on others. But such treaties are not void in the view of international law; no legal right of any other nation has been infringed. A third nation has a right to interfere if any vested right it has previously acquired is affected, but it has no right in law to intervene merely because another State has obtained an advantage which it desires to participate in. The rule of interna-

tional law on the subject is clearly stated by Rivier in the following passage:

*Il arrive, enfin, qu'un Etat tiers s'oppose à la conclusion d'un traité, et prétend être entendu dans les négociations. Cette opposition n'est justifiée que si des droits acquis, appartenant à l'Etat tiers, sont lésés ou menacés par le traité projeté; autrement, elle porterait atteinte à l'indépendance des Etats, et constituerait une intervention injuste, non pas seulement dans les relations extérieures des autres Etats, mais dans leurs affaires intérieures.*

It can not be contended that the claims of the other creditor powers were "droits acquis" within the meaning of this rule.

It is submitted, therefore, that the other creditor powers had no right in law to object to a separate settlement of the claims of the blockading powers, and that, whatever may be the scope of the alleged principle of equality, it has no application to the present case.

It is important to bear in mind in this connection that the portion of the customs revenue now in dispute is not the only asset of Venezuela. There are other resources which can be made available if necessary. And, in fact, the balance of the customs receipts, still uncharged, appears to be the same in amount now as it was before the assignment, because, as has been stated in the German case, it has been found possible to impose an additional customs duty to make up for the portion assigned under the protocols. The amount, therefore, at the disposal of Venezuela remains the same as it was before the assignment.

6. The case of China, which is apparently the only case that has ever been suggested as a precedent in favor of the contention of the other creditor powers, and to which great prominence has been given in the cases under reply, has no bearing on the present question.

The circumstances of the expedition to relieve Peking will be within the recollection of the court. The whole of the foreign legations in Peking were besieged, and a joint force, supplied by the powers who had troops at the time available for the purpose, was sent to relieve the legations. This was successfully accomplished. The question then arose as to the amount of the indemnity that was to be paid by China. The powers who had suffered losses made an estimate of their claims, and the total amount of these estimates came to 450,000,000 taels. That amount was accordingly demanded from China, and that amount China agreed to pay. It was not a case of an offer by China of a specific sum to be divided among the powers in settlement of their claims. It was a case of a demand by all the powers of the estimated total of their claims and payment by China of that amount. It is true that all nations were treated on an equal footing, and that the nations who had not actually taken part in the relief expedition shared equally. The total of their claims appears,



however, to have been less than 10,000,000 taels out of the whole total of 450,000,000 taels. No question of any right to equality of treatment was ever suggested, nor did it make any difference to the other powers whether these claims were admitted or not—it did not diminish their share.

Moreover, the position was very different in China to that in the present case. The blockading powers took action solely to enforce their own claims. The primary object of the relief expedition, on the other hand, was not payment of any indemnity. It was sent to relieve the foreign legations, including, of course, the legations of all the powers, and it was dispatched in the interests of all.

After the agreement with China had been made the particulars of the foreign claims were examined, and it then appeared that the total amounted to some 463,000,000 taels instead of 450,000,000 taels. This small difference was accordingly deducted ratably from the totals of the claims of the respective powers. No claim of right was ever made, and the question of the existence of such a right was never mooted.

It is impossible, therefore, that the case of China can be regarded as having created a precedent for the present claim.

7. But if it be once granted that the blockading powers could enforce a separate settlement of their own claims, and that Venezuela could make a separate assignment of her customs revenues for that purpose, then it follows, from the facts of this case, that the blockading powers are entitled to priority. It has been shown in the preceding counter case that the blockading powers, from the first, demanded security for their second-rank claims of an amount adequate to insure the discharge of those claims within a reasonable time, and that Venezuela expressly assented to that demand, and offered to assign the very security now in question for that purpose.

The objection was then taken that she could not make an assignment for the benefit of one set of creditors alone, but that all must share equally. If that objection fails, then it is submitted Venezuela must fulfill her contract and give adequate security out of her revenues to the blockading powers. The only means by which that can be done is, as has already been pointed out, to give the blockading powers priority over the other creditor powers.

8. Apart, however, from these considerations, it is submitted that the difference in the respective positions of the two sets of creditor nations in regard to Venezuela of itself negatives the possibility that the maxim involved could apply to the present case. On the one side there were the blockading powers, who had taken action to enforce their demands. On the other side were the other creditor powers, who had taken no steps to press their claims. On the one side the blockading powers were exerting severe pressure on Venezuela, block-

ading her ports, holding her navy and much of her merchant shipping as prize. On the other side were the creditor powers who had taken no steps whatever to put pressure on Venezuela. The former had something to give, which it was an object of vital importance to Venezuela to obtain. If their demands were satisfied they could cause the blockade to cease—they could return the Venezuelan vessels. The other creditor powers had nothing to give, and no such special reason to suggest why their claims should be settled. There could be no equality among the creditors in these circumstances.

9. It is submitted that these facts gave per se to the blockading powers a right to a prior settlement of their claims. It is undoubted that this security was obtained by the efforts of the blockading powers, and their efforts alone. What right have the other creditor powers to claim to share in the result of those efforts on equal terms? They do not even offer to pay their share of the costs incurred in obtaining the security. On the contrary, some space is devoted in the cases under reply in proving that those costs can not be made a first charge on the security, and no one of the powers who seek to share on equal terms in the security makes any offer to contribute toward the costs of obtaining it. Moreover, it is undoubted that the blockading powers could have continued these measures of force until they had secured compliance with their demands. They were in a position to do so at the time the protocols were signed, and it is the question of their rights at this moment which has to be determined by this court. If they had continued the blockade and had secured an actual assignment from Venezuela, could any of the other creditor powers have come before this court and successfully claimed to set aside that assignment on the ground that it was invalid in law? It is certain that no such assertion of right has ever yet been made by one nation against another, and it is submitted that the law is correctly stated in the opinion of M. Rivier, to which reference has been already made, and that intervention in such a case could be justified only if some vested interest had been impaired.

In fact, therefore, the blockading powers, having followed the procedure which is recognized by the law of nations as the legitimate procedure among nations, had attained a position in which they were able to insure compliance with their demands. It is in that position that they must be regarded as being for the purposes of this case.

If this court were to hold that belligerents, in such circumstances, by referring a dispute of this nature to arbitration, had put themselves in a worse position in the view of the law than they were in fact before the agreement to refer was made, a serious blow might be struck at the cause of international arbitration; for it is to be apprehended that belligerents in future cases, rather than abandon the

advantage which they had in fact secured, would continue hostilities until actual compliance with their demands had been enforced in full.

It is submitted, therefore, that in the circumstances existing at the time of the signing of the protocols the blockading powers were entitled to a prior claim on any security obtained from Venezuela by their action.

10. The conduct of the other creditor powers affords a further and, it is submitted, a conclusive answer to their present claim to equal treatment. They were aware that the action of the blockading powers was undertaken to secure satisfaction of their own claims, and their own claims alone. If they had had any grounds for objecting to that action or for objecting to the separate satisfaction by Venezuela of the claims of the blockading powers, they should have protested at the time. But this they did not do. They stood by and allowed the blockading powers to run the risk and bear the expense of the measures of force which were necessary to obtain this security, and it was only after it had become certain that those measures had been successful and that security had been obtained that, at the instance of Mr. Bowen, they raised the present objection.

It has been shown that the Governments of Belgium and France made a reservation of their vested rights in respect of some small portion of the customs receipts already allocated to the discharge of particular liabilities, but that they made no other objection, and that the other powers, even if they were not informed beforehand of the action proposed, made no protest when they heard of it.

It is submitted, therefore, that the other creditor powers can not be entitled now to come forward and make those objections which they expressly refrained from making at an earlier period.

11. Some point is made in the cases under reply that the blockading powers have obtained sufficient satisfaction for their demands.

The question whether His Majesty's Government have already obtained sufficient advantages by their action or not is hardly material to the present purpose. They have obtained a payment of £5,500, but they have borne the costs of the blockade and have returned to Venezuela some sixty vessels seized as prize. So that the advantage already obtained appears hardly so great as is suggested. But it is sufficient in answer to this contention to repeat that the provision of adequate security for the second-rank claims was insisted on from first to last by His Majesty's Government, and that it was stated throughout that the provision of such security was a condition precedent to the raising of the blockade.

It is further contended that His Majesty's Government by insisting on immediate payment of their first-rank claims impliedly admitted that their other claims should be settled according to law. This point is not made out by the evidence which has been presented to the court.

His Majesty's Government insisted, it is true, on an immediate payment of £5,550 as compensation for claims arising out of cases of injury to British subjects and of insults to the British flag. But they also insisted from the first on immediate payment of the second-rank claims or, in the alternative, if Venezuela was unwilling to pay in cash, on the assignment of adequate security to insure the discharge of those claims within a reasonable time.

12. In the case presented on behalf of the Government of the French Republic it is asserted that the analogy of municipal law supports the claim of the other creditor powers to equality of treatment. But it is submitted that this is not so except in the case of bankruptcy, and it has been shown that this is no case of bankruptcy. A creditor who is entitled to take and does take particular property of a debtor in execution is entitled to priority in the payment of his debt out of that property over other creditors. This was the rule of the civil law, and it is a rule common to most systems of jurisprudence. The creditor who takes action to protect his interests is entitled to priority over another creditor who does not choose to enforce his rights. *Vigilantibus non dormientibus subvenit lex*. The position of the blockading powers in the present case was analogous to that of a creditor who has taken property of his debtor in execution. The blockading powers had in their hands the Venezuelan navy and a considerable number of merchant vessels, and the pressure exerted by means of the blockade was of a very stringent character. If, therefore, the analogy of private law be applied, it would appear that it does not assist the claim of the other creditor powers, but that, on the contrary, it presents an argument of considerable force in favor of the claim to priority of the blockading powers.

13. It is further contended that this court should discourage nations from resorting to force, and that, therefore, no advantage should be allowed to the blockading powers in this case. The considerations which arise in regard to this contention are similar to those which have been already discussed in the former counter case in reply to the argument of Venezuela, and it is not necessary to repeat here the observations which have been there presented. But it may be observed, with all respect, that this argument is based on a somewhat mistaken view of the functions of international arbitration.

Force still remains the only ultimate remedy available for nations to obtain satisfaction for their grievances. This tribunal can determine disputed question of law or of fact, but it has no power of enforcing its awards. It can not assist a nation in obtaining satisfaction from another nation, even in cases in which it has declared that satisfaction to be properly due. Nor can it compel any nation to submit to its jurisdiction. In municipal law a plaintiff can compel a defendant to appear before the courts of his country, and if he succeed

in his suit the courts will enforce for him the judgment he has obtained. There is no similar procedure available as between nations. This has always been recognized by international law, and nations who resort to force may acquire special privileges and special rights.

If this court were to act on the view suggested by the other creditor powers, and were to deprive nations who had resorted to force of the advantages which they had, in fact, actually obtained, the result would be, as has already been pointed out, not that wars would cease, but that there would be fewer references to arbitration after war had once begun.

14. Two further points are made in the Belgian case, on which it is desired to submit a brief comment. In the first place, it is said that force can not be a source of right, that a pledge can not result from the use of force, and that therefore the security obtained by the blockading powers can not inure to their benefit. It is submitted that this is not the view of international law. Agreements among nations can not be set aside on the ground of duress; indeed, if that were so, the greater number of the treaties by which hostilities have at various times been terminated would be voidable. The law on this point is stated by Hall in the following terms:

In international law force and intimidation are permitted means of obtaining redress for wrongs, and it is impossible to look upon permitted means as vitiating the agreement, made in consequence of their use, by which redress is provided for. Consent, therefore, is conceived to be freely given in international contracts, notwithstanding that it may have been obtained by force, so long as nothing more is exacted than it may be supposed that a State would consent to give, if it were willing to afford compensation for past wrongs and security against the future commission of wrongful acts. And as international law can not measure what is due in any given case, or what is necessary for the protection of a State which declares itself to be in danger, it regards all compacts as valid, notwithstanding the use of force or intimidation, which do not destroy the independence of the State which has been obliged to enter into them.

The difference on this point between municipal and international law is clearly stated in Wheaton, s. 267; see also Bluntschli, s. 408; De Martens, *Précis*, 2d edition, Book II, c. II, s. 50, 52.

It is further said that the protocols recognize the right of all the creditor nations to share equally in this security, and that that is conclusive of the matter. It is only necessary, however, to point out in reply that if this were so there could be no question for the decision of this court, and that the articles to the protocols providing for arbitration would be meaningless.

15. Passing now from the considerations which are common to the claims of all the other creditor powers, it is proposed first to deal with the special facts affecting the French claims.

In 1885 France concluded a convention with Venezuela providing for the payment of claims then due out of the portion of the whole



customs revenues, viz, the 5.2 per cent which was assigned as security for the diplomatic debt. On the 14th February, 1902, France concluded a further agreement with Venezuela, providing for the payment of further claims out of the same security after an examination by a mixed commission. It was to this security that M. Cambon referred in his memorandum of the 28th November, 1902, and it is to this security only that the reservation made in that memorandum applies. It is noteworthy that the Government of the French Republic did not apparently entertain at that time the view that the other creditors of Venezuela were entitled to equality of treatment. On the contrary, the reservation made in this memorandum shows that France disputed the right of any other creditor to obtain a like charge on that security.

It is not known to His Majesty's Government whether the claims which it is now sought to charge on the security in dispute include claim for which security has been already provided under the arrangements referred to or not. That is a matter which will no doubt be explained to the court. But it is submitted that no claims which were included in those arrangements can in any case be allowed to rank as against the present security. Those claims have been secured in a manner accepted as satisfactory by the creditors. The fact that other creditors have since obtained a better security affords no reason why the first arrangement should be disregarded. It gives no right to France to claim to reopen her bargain.

16. The same observations apply to the claim of the Caracas Water Company, which is put forward by the Belgian Government. The amount of this claim has been fixed by a mixed commission at £422,000.

It originates out of the sale to the Venezuelan Government of waterworks owned by the company in Caracas. The purchase money was paid in bonds of the internal debt secured, not on the 5.2 of the customs assigned to the diplomatic debt, but on a further "27 per cent of the 40 unities;" or, in other words, of a further 10.8 per cent of the whole customs revenue assigned as security for the internal debt. That security is not affected by the present charge. It was to the security of this 10.8 per cent that M. Grenier's reservation alone referred.

It appears that for a few years past the interest on these bonds has not been fully paid, although some payment was made as late as 1901. The terms of the contracts relating to this transaction are not known to His Majesty's Government, and they must, therefore, reserve the right to comment further on this claim when they have had an opportunity of seeing the documents relating to it, to which reference is made in the Belgian case. There does not at present appear to be any sufficient reason why this bargain should be reopened, or why fresh security should be now demanded for this large claim.



17. His Majesty's Government are not aware whether any other claims presented by any of the other creditor powers are also already secured in other ways. They have made a formal request for information on this point in the British case, and they have no doubt that a full disclosure of any such securities will be made by Venezuela and the other powers. This is a matter which the tribunal must take into consideration in accordance with the terms of Article I of the agreement of 7th May, if it should come to the conclusion that the other creditor powers are entitled to share equally in the security in dispute.

In that event, it is contended that claims already secured by other charges should not be admitted to rank as against the security in dispute. If, however, the court should think proper to admit these claims, then it is contended that any prior security on which they are already charged must be taken into account in estimating the proportion to be allowed in respect of them out of the security in dispute; and that the condition should be imposed that all prior securities should be made available for all creditor powers equally.

If the court decides that the blockading powers are entitled to priority, it will not be necessary to investigate these questions. It will be sufficient in that event for the court to declare that the claims of the blockading powers are to be first discharged out of the revenues assigned, and the court will not be asked to make any further order as to the distribution of the moneys paid over by Venezuela.

#### CONCLUSION.

His Majesty's Government therefore submit that the other creditor powers have not made good their claim to share on equal terms in the security obtained from Venezuela by the action of the blockading powers, and that any claim by them to share in that security must be postponed to the claims of the blockading powers.

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### SUPPLEMENT TO BRITISH COUNTER CASE.

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#### STATEMENT BY MR. TOWER, HIS BRITANNIC MAJESTY'S MINISTER AT MUNICH, FORMERLY SECRETARY OF HIS MAJESTY'S LEGATION AT PEKING.

In July, 1900, I reached China on appointment as His Majesty's secretary of the legation, and remained at Peking in that capacity till October, 1901.

This period covered the conclusion of the peace negotiations with the Chinese plenipotentiaries (note to Chinese plenipotentiaries of December 22, 1900, appended); the acceptance by China of the provisions of that note (December 30) appended; the examination of

claims of the respective powers, and the final assessment of 450,000,000 taels, roughly £68,000,000 (Mai, 1901), which the Chinese Government were to pay as indemnity to the powers.

I have read the passage on pages 44 and 58 of the British counter case (Venezuelan claims arbitration). They represent accurately what occurred. It should be borne in mind, in reading the statement on page 58, that it was no question of any existing debts owed by China to the powers. The indemnity was, in the words of the joint note to the Chinese plenipotentiaries of December, 1900, for "Governments, companies, societies, and private persons, as well as for Chinese who had suffered during the recent occurrences"—i. e., the Boxer outbreak, resulting in the relief force being sent to Peking. The amounts filed by the respective Governments covered the destruction of their property in Peking and elsewhere and for their military expenditure in the relief of the legations. The claims of societies and private persons were limited to a just estimate of losses, supported as far as possible by proof.

The British private claims were submitted to a preliminary investigation by a local committee, consisting of the acting Chinese secretary, the accountant in His Majesty's legation, and myself. The Crown advocate in Shanghai was subsequently intrusted with the duty of examining the British claims in detail. A set of rules was drawn up for the use of the nominees of all the foreign legations, each nominee having the charge of investigating the claims of his own nationals. In some cases the claims were examined in Europe, and I believe the Japanese were examined at Tokyo, but the majority were dealt with under the superintendence of the respective foreign representatives.

No question was ever raised, as far as I know, in the councils of the foreign representatives in Peking in the investigation of claims, or in the assessment of the total indemnity payable by China, that the non-expeditionary powers—i. e., the powers which have not contributed to the force for relieving the Peking legations, should be differentially treated as far as their share of the indemnity was concerned. Such a question was not mooted, and indeed would have been difficult to establish, inasmuch as the primary cause of the relief force was to bring succor to all the foreign representatives and non-Chinese subjects and citizens whose lives were endangered by the siege.

When peace had been restored and the decision of the powers had been conveyed to China that an indemnity would be exacted, all the powers represented in Peking commenced to investigate and assess the amount of the losses sustained. The British minister included in the total amount the claim preferred by Portugal.

Appended to this statement are:

1. Joint note to Chinese plenipotentiaries, December 24, 1900.

2. Acceptance by China, December 30.
3. Communication to Chinese of total amount of indemnity, May 7, 1901.
4. Chinese acceptance of the above.
5. Final protocol, September 7, 1901.

REGINALD TOWER.

OCTOBER 30, 1903.

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NOTE.

Copies of the documents appended to this statement have been deposited with the original statement at the Bureau. The documents are well known to the other creditor nations, and it is thought sufficient therefore to set out only an abstract of the material points in them.

(1) 22d December, 1900. Joint note from the representatives of the powers at Peking to the Chinese plenipotentiaries, specifying the demands of the powers.

These demands included—

ART. 2. Punishment of certain Chinese officials concerned in the Boxer rising.

ART. 4. Erection by the Chinese Government of expiatory monument in each of foreign cemeteries in which graves had been destroyed.

ART. 5. Prohibition of the importation of arms.

ART. 6. Indemnity to Governments, societies, individuals, and Chinese for losses incurred in consequence of their being in the service of foreigners.

ART. 7. All powers to have right of maintaining permanent guards for their respective legations.

ART. 8. Taku and other ports to be razed.

ART. 9. Powers to have right to occupy certain points for maintenance of communication between capital and sea.

ART. 10. Provision for protection of foreigners in China.

ART. 11. Negotiations to be undertaken for amendment of treaties of commerce with all the powers.

ART. 12. Reform of office of foreign relations and of court ceremonials with all the powers.

(2) 30th December, 1900. Acceptance by China of these conditions.

(3) 7th May, 1901. Communication to China that claims of all the powers amounted to 450,000,000 taels, and demand for undertaking to pay this sum.

(4) 12th May, 1901. Acceptance by China, and undertaking to pay this sum.

(5) 7th September, 1901. Formal protocol recording agreement of China contained in above documents.

## COUNTER CASE ON BEHALF OF GERMANY.

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### A.—REPLY TO THE CASE OF THE VENEZUELAN GOVERNMENT.

I. Germany, Great Britain, and Italy having claimed the right to obtain, in priority to the other creditor powers, satisfaction of their claims against Venezuela out of the 30 per cent of the customs revenues of La Guaira and Puerto Cabello, assigned to the creditors of Venezuela, such claim is objected to by the Venezuelan Government for the following general reasons: It is maintained by Venezuela that the decision of the question whether the blockading powers are entitled to the said privilege depends in the first place on the other question whether the action undertaken by them against Venezuela is to be considered justifiable, and it is argued that only in case this question should be answered in the affirmative would the tribunal of arbitration at The Hague, established, as it was, for the purpose of promoting peace, be in a position to award to the blockading powers any benefit on account of the war carried on by them. In the opinion of the Venezuelan Government this war was carried on wrongfully, neither the claims of the blockading powers nor their manner of proceeding being justified. Entering into particulars, the counsel for Venezuela then take exception to the claims and to the action of Great Britain, and argue that each of the blockading powers being responsible for the action of her allies it is sufficient for them, in order to demonstrate the illegality of the whole action, to show that the steps taken by Great Britain could not be justified.

In reply to these arguments, on the other hand, it is contended on behalf of His Majesty's Government as follows: It can hardly be presumed that the Tribunal of Arbitration will, on their part, feel themselves authorized to pronounce a verdict upon the question whether the action of the blockading powers was justified or not. It is also to be maintained that their claim is not dependent on this question. If, however, it should be considered necessary to discuss that question, then the blockading powers would not have the slightest objection to an investigation into their claims and their action against Venezuela.

As far as Germany is concerned, the case presented by Venezuela does not give any detailed statement. It would therefore not seem

necessary to enter into particulars in this respect. As to the legality of the German claims it will be sufficient to refer to article 1 of the German protocol of the 13th of February, 1903, according to which the Venezuelan Government have, in principle, recognized the justice of the claims preferred by the Imperial Government. In deciding upon her action against Venezuela, Germany was in no manner whatever influenced by the fact that the Venezuelan Government had not actually satisfied the claims of her German creditors. On the contrary, as stated in the German ultimatum of the 7th of December, 1902, she was guided exclusively by the consideration that Venezuela had definitely refused to effect, by diplomatic methods, a settlement of the German claims which originated from acts of violence committed by her authorities. That such refusal did actually take place is sufficiently evident from the correspondence between the German representative in Caracas and the Venezuelan Government, a translation of which is contained in the Appendixes to the Venezuelan case. We refer especially to the following passages from the dispatches of the Venezuelan Government:

Dispatch of the 23d of July, 1901.

\* \* \* You (the German chargé d'affaires) insist that the cooperation of the authorities of the Empire in the examination of claims must be guaranteed; and Venezuela, on behalf of her sovereignty, and by virtue of her domestic legislation, maintains that such cooperation is wholly inadmissible. \* \* \* I carry out the instructions of the chief magistrate that I shall express the hope that upon reconsidering the case, you will accept the grounds on which the Venezuelan Government declines to assent to the proposed intervention of the legation. \* \* \*

Dispatch of the 8th January, 1902.

\* \* \* The arguments advanced by the (Venezuelan) Government to demonstrate the impossibility of giving diplomatic examination to what appertains to the domestic legislation of the Republic have not been considered, and much less refuted, by the legation. \* \* \*

Dispatch of the 9th May, 1902.

\* \* \* The President \* \* \* believes that it will be sufficient to give a brief explanation \* \* \* in order to bring the Government of the Republic and the honorable Imperial legation to a perfect accord in regard to the judicial impossibility to admit diplomatic intervention in matters defined, as that is, by the laws of the country. \* \* \* For Venezuela to admit that diplomatic action is superior to the operation of her laws, would be like a contravention of the privileges of her indispensable sovereignty. \* \* \*

The Venezuelan Government thus expressly declared that the settlement of foreign claims could exclusively take place according to the laws of Venezuela, that these laws did not provide for the cooperation of any foreign authority, and that consequently any diplomatic intervention was inadmissible. In conformity with this view Venezuela rejected all endeavors made by Germany in order to effect

a settlement of the claims by diplomatic methods. It did not even consider it necessary to reply to the proposals made by Germany to refer the matter to the Tribunal of Arbitration at The Hague or to have the German claims examined by mixed commissions. In the Venezuelan case it is said that General Matos's revolution had prevented Venezuela from considering these proposals. But this argument can hardly be taken seriously, since the German proposals were made as early as July 16, 1901, while the revolution of General Matos did not break out before the end of November, 1901. Moreover, the Venezuelan Government have had sufficient time and opportunity during the one year and a half which preceded the beginning of the action to give an answer to the said proposals in their detailed replies to the German representative. It is therefore evident that Germany exhausted all peaceful means before she proceeded to enforce her well-founded claims by resorting to military action.

As to the justification of the claims of Great Britain and of her action against Venezuela, it is, of course, for her to reply to the attacks made upon her in the Venezuelan case. The Imperial Government do, however, not hesitate to state that they did, before entering upon the joint action, convince themselves of the justice of the British claims.

II. The claim preferred by the blockading powers is furthermore objected to by the Venezuelan Government for the following special reasons:

1. Venezuela asserts that Germany had, before taking warlike measures, claimed a right of preferential treatment only for the claims arising out of the civil wars of 1898 to 1900, which have been satisfied in the meanwhile, but had not claimed such treatment for her other claims. This statement is not correct. In the ultimatum of December 7, 1902, Germany demanded for her other claims not an immediate payment, as she had asked for her claims arising out of the civil wars from 1898 to 1900, but only sufficient security, the nature of such security to be referred to arbitration. It is only this which she now demands, her claim taking the form of a claim for preferential satisfaction, because it is only if employed exclusively for the benefit of the blockading powers, and not generally for all creditor powers, that the 30 per cent assigned for this purpose can afford a sufficient security.

2. Venezuela asserts that Germany had expressly agreed to a proposal made by the Venezuelan plenipotentiary, Mr. Bowen, according to which the 30 per cent assigned for this purpose to be employed for the satisfaction of all the creditor powers. It is argued that Germany is bound by such consent. This statement is not consistent with the facts. On the contrary, if reference be made to the correspondence between the representatives of the blockading powers and Mr.



Bowen, which is introduced as an appendix to the Venezuelan case, the following will be found to be a correct statement. On January 23, 1903, Mr. Bowen proposed that all claims against Venezuela should be paid out of the 30 per cent of the customs revenues of La Guaira and Puerto Cabello. The German representative, far from agreeing to this proposal, which did not show clearly whether it was meant to refer only to all claims of the blockading powers or also to those of the other creditor powers, which had till then not been mentioned in the negotiations between Germany and Venezuela, confined himself to reporting it to the Imperial Government, as had been arranged between the parties concerned. In the meanwhile the German representative did, on January 24, present to Mr. Bowen a memorandum which, besides specifying the claims preferred by Germany, among other things demanded that security should be given for the German claims, the nature of such security to be determined by arbitration. Mr. Bowen, on the same date, put his signature to this memorandum, accepting the claims preferred by it and declaring at the same time expressly that the answer of the German Government had to be awaited with regard to the security proposed by him. He has thus expressly recognized that his proposal required the assent of Germany. It was only in the course of the latter negotiations that Mr. Bowen, verbally on the 25th January and in writing on the 27th January, more fully explained his proposal regarding the security, by stating that the 30 per cent were destined not only for the blockading powers but for all the creditor powers. Thereupon the German representative did, under instruction of his Government, declare definitely that the 30 per cent could not be accepted as a sufficient security, unless they were to be employed exclusively for the benefit of the blockading powers, and he, consequently, protested against the assignment of the 30 per cent to all the creditor powers. The fact that this protest has been made is rendered evident by the written "objections" raised by Mr. Bowen on January 30, which finally led to the submission of the question to the decision of the Tribunal of Arbitration at The Hague.

3. Venezuela asserts that all nations having, in accordance with the principles of international law, a right to equal treatment, the blockading powers could not claim preferential payment out of the 30 per cent except on the ground of some special title. But the existence of such a special title has been shown clearly and distinctly in the cases submitted by the blockading powers. Of course the latter have no objection whatever to Venezuela, if she should so choose, satisfying the other creditor powers in a similar way out of other resources. If the blockading powers demand to be satisfied preferentially out of the 30 per cent, it is only because there is no other way by which they can obtain the satisfaction promised by Venezuela.

4. Venezuela further points out that in the case of the joint action of the powers against China, which her counsel consider to be the only precedent in history, the claims of all nations had been treated on an entirely equal footing, although Spain and Belgium, for instance, had not participated in the military operations. In reply we have to say that an exceptional case like this would by no means suffice to establish a principle of international law, especially since in this case all powers were admitted by general consent, while in the case of Venezuela the blockading powers did at once protest against the admitting of the other creditor powers to the security offered by Venezuela. Moreover, in the case of the Chinese troubles nearly all interested powers did, as much as they could, actively cooperate for the purpose of restoring order in China. Belgium, for instance, actually made preparations for an expedition of her own, and by decree of the Government prohibited the sale of arms to China.

With China there was not a question about a military action against the Chinese Government for the enforcement of certain definite claims, but the joint action was provoked by an attack on the legations of all the powers, such attack being not a mere violation of international law, but the most outrageous negation imaginable of the fundamental principles of all international law and intercourse, in the reparation of which all civilized powers were directly and equally interested, and for which principles the powers that took part in the operations have exerted themselves, acting deliberately as mandataries of the other powers. The question of indemnity came in only as an accessory, and could not be treated differently from the main question without endangering the solidarity which all the powers had to maintain in their relations to China. The blockading powers, on the contrary, were in a state of war against Venezuela for the purpose of enforcing certain definite claims and at the present moment the question is only whether the revenues which Venezuela, yielding to the pressure of military action, did assign for the purpose, shall, to the detriment of the blockading powers, be employed also for the benefit of all the other creditor powers. Finally, China did not, like Venezuela, set aside for the satisfaction of the claims preferred in connection with the expedition certain revenues which were absolutely inadequate for the satisfaction of all claims, but China placed at the disposal of the powers resources which proved, on the whole, sufficient for the payment of all claims of the foreign powers. By these resources are also covered those expenses which the powers incurred for the purpose of carrying through their military operations, while in Venezuela the expenses of this nature have not been refunded to the blockading powers.

5. According to the contention of Venezuela the blockading powers ought to have refrained from their action on account of the two fol-

lowing considerations, to wit: First, their great superiority of power should have induced them to count upon an amicable settlement of their claims and they ought therefore not to have resorted to the extreme measure of making war on Venezuela. Secondly, they ought to have taken into consideration that the claims, to enforce which they took action, had been fixed and determined only by the powers themselves, and these claims should not have been made the cause of war without having been examined into and determined upon in cooperation with Venezuela. Neither of these views is admissible. It has been shown already under Section I that Venezuela had definitely refused to effect a settlement of the German claims by diplomatic methods. Therefore no further peaceful measures were left for Germany to resort to. Likewise it was impossible to consult Venezuela for the purpose of examination of the claims, because she had already declined the German proposal made with that object. The Imperial Government had therefore no other way left but to effect an examination of these claims through their own officials, viz, their representative in Caracas and the law department of the foreign office. Owing to this examination the claims, as lodged with the foreign office, were in fact considerably reduced in their amounts. To desist from further action in the face of the provoking attitude assumed by Venezuela would not have been compatible with the dignity of Germany. No state can renounce the right to protect its subjects against foreign arbitrariness if an open injustice is inflicted upon them. A general adoption of the Venezuelan point of view would result in the paradoxical conclusion that weak countries are less strictly amenable to the rules of international law than powerful nations.

6. Venezuela asserts that Great Britain should have considered herself bound by the convention signed at The Hague on July 29, 1899, to propose a settlement by arbitration before entering into the action. The said convention has not laid any obligation upon its signatories to appeal to arbitration, and besides, it is difficult to understand how Venezuela can derive any rights from a protocol which she has not joined. Moreover, Venezuela had rejected Germany's proposal of a settlement by arbitration, so that the two other blockading powers could see no reason why they should advance a proposal which was sure to be declined.

7. Venezuela asserts that the Tribunal of Arbitration at The Hague, being an institution created for the purpose of preventing war, would act in contradiction with its character by awarding that any benefit or advantage could be derived from warlike action. This argument hardly needs any reply. The Tribunal of Arbitration is, it is submitted, bound equally to take into consideration those rights which result from war, and will, by just and equal considera-

tion of those rights, serve best the promotion of the cause of peace. It was just with a view to the decision of the tribunal of The Hague that the blockading powers thought it possible to consent to a raising of the blockade without having carried their point with regard also to the present question. If the decision should prove to be unfavorable to them, this would, in future similar cases, not help to induce any power to desist from its military action without having first obtained actual security for all claims. A decision in favor of the blockading powers would, on the contrary, in future enhance the tendency to limit the duration of a war and it would thereby promote the cause of peace.

Finally, Venezuela, apparently in order to show her unselfishness, avers that she has no pecuniary interest in the issue of the arbitration. This statement, however, appears to be erroneous, because in case of a decision in favor of the blockading powers Venezuela can not avoid satisfying the other creditor powers by means of other revenues, or in some other manner.

#### **B.—REPLY TO THE CASE OF THE BELGIAN GOVERNMENT.**

I. The considerations adduced by the Belgian Government in objecting to the claim of the blockading powers are more fully expounded in the cases of other powers, and they are answered in all particulars in the German replies to those cases. It suffices, therefore, to refer in general to the statements made in those replies.

II. It is only the claim preferred by the Belgian Government on behalf of the former Caracas General Water Supply Company which requires special discussion. The facts underlying this claim can, on the whole, be gathered from the statement accompanying the Belgian case. It appears that the former Caracas General Water Supply Company had in 1895 transferred its concession with all its works and constructions to the Venezuelan Government for the price of about 10,500,000 bolivars in bonds of the so-called "Caracas water supply debt." It was agreed that the net profits derived from the waterworks and the surplus of the revenues destined for the payment of the special internal debt should be employed for the service of the said Caracas water supply debt. According to the Venezuelan budget, the revenues from the waterworks alone have yielded more than the amount required for the service of the debt. A few years ago the service of the debt was suspended and the Belgian-Venezuelan commission having fixed the amount due from it at 10,565,199.44 bolivars, the Belgian Government has now claimed satisfaction for this sum out of the 30 per cent. On behalf of His Majesty's Government, objections to this claim are raised on the following grounds:

1. According to the provision of article 5, paragraph 1, of the

German protocol of February 13, 1903, the 30 per cent are destined exclusively for the satisfaction of the German claims mentioned in article 3 and of "similar claims" of other powers. It follows that the Belgian claim arising out the water-supply debt can only be admitted to satisfaction out of the 30 per cent if it has to be considered as a "similar claim" in the sense of the aforesaid article 5. This, however, is not the case, because the Venezuelan loans are, according to article 6 of the German and British protocols, not to be paid out of the 30 per cent, and the admission of the Belgian loan creditors to the security in question would, therefore, be prejudicial to the rights of all creditors to whom satisfaction out of the 30 per cent has been promised. The Belgian Government contends, it is true, that the tribunal will have to admit the claims of the creditor powers to payment out of the 30 per cent exactly as they have been recognized by the mixed commission. But this view is not admissible, because there can be no doubt that it is the tribunal, and not the mixed commission, which has to decide as to the requirements of similarity mentioned in article 5 of the German protocol. Otherwise Venezuela would have been in a position to submit by agreements with other powers any claims to the mixed commissions and thereby effect their payment out of the 30 per cent.

2. As a further reason why the Belgian claim can not be admitted, we wish to point out, that, according to article 1, paragraph 3, of the arbitration agreements, any preference or pledges of revenue enjoyed by any of the creditor powers have to be considered in connection with the distribution of the 30 per cent. The water-supply debt, being more than sufficiently secured by the revenues assigned by special agreement for its satisfaction, must for this reason alone be left out in the distribution of the 30 per cent. If, as the Belgian Government asserts, Venezuela, in contravention of her obligations, uses the revenues in question for other purposes, Belgium is at liberty to take the proper steps in order to compel the Venezuelan Government to fulfill its duties, but she can not from this circumstance derive any right to consider the preference of the creditors of the water-supply debt as canceled and so claim satisfaction out of the 30 per cent. The case would in no way be different even if Belgium should, as she suggests, renounce her right of preference, for she could, as a matter of course, not impair by such renouncement the rights of the other creditors.

#### C.—REPLY TO THE CASE OF THE FRENCH GOVERNMENT.

I. The claim preferred by the blockading powers is objected to by the French Government for the following general reasons: It is maintained by France that the 30 per cent of the customs revenues of La Guaira and Puerto Cabello had been assigned conjointly to all



the creditor powers. The blockading powers could therefore not be said to be in possession of those revenues; on the contrary, they had no better right in respect of those revenues than the other creditor powers unless they could show some special title. In default of such special title the 30 per cent would, in the opinion of the French Government, have to be distributed equally, in conformity with general principles of law, among all the creditor powers. According to international law, it is argued, all nations have to be treated on the same footing and, if the principles of civil law were applied to the present case, it might be construed as if bankruptcy proceedings had been opened against Venezuela in the course of which the claims of all creditors would have to be satisfied equally.

In reply to these arguments it is contended on behalf of His Imperial Majesty's Government as follows: As will be shown more explicitly later on, Venezuela did not assign the 30 per cent conjointly to all the creditor powers, but in the first place only to the blockading powers, although, it is true, she inserted at the same time a restriction of which, at a much later period, she made use in favor of the other creditor powers. In any case, however, it can not be maintained that the claims of all the creditor powers had, from the outset, enjoyed equal privileges with regard to the revenues in question. As to the special title required by the French Government, its existence is set out explicitly in the cases of the blockading powers. To draw any conclusion from the analogy of bankruptcy proceedings is impossible, because such proceedings would require the insolvency of the debtor and entail the distribution of his whole property, while Venezuela, as is shown in the British case, is neither insolvent, nor has she offered to her creditors more than a small fraction of her revenues. Furthermore, if we had to deal with bankruptcy proceedings, all existing claims would have to come in, while in the present case Germany and England are, with regard to their most important claims, viz, those arising from the Venezuelan loans of 1881 and 1896, not demanding satisfaction out of the 30 per cent at all.

II. The claim preferred by the blockading powers is furthermore objected to by the French Government for the following special reasons:

1. France points out, first, that the blockading powers would only be entitled to derive any rights from their military operations against Venezuela if such rights caused no direct injury to the rights of any third power, and, secondly, that such direct injury exists as soon as the creditor powers see themselves deprived of the 30 per cent promised to them too. His Majesty's Government can not concur with this view. The promise respecting the 30 per cent was given by Venezuela first of all to the blockading powers alone in the protocols of



February 13, 1903. At that time the other creditor powers had no right whatever in regard to those revenues. Such rights could therefore subsequently be granted to them by Venezuela only in so far as that could be done without impairing the rights of the blockading powers. It follows that these latter rights can only be determined by reference to the previous negotiations between the blockading powers and Venezuela, and it has been shown already under I, 1 of the German case that according to these negotiations the blockading powers are entitled to the security of the total amount of the 30 per cent.

According to the contention of France the blockading powers could not either base their claim on the service rendered to the other creditor powers by their military operations against Venezuela. It is argued that such service would be of but small significance if the blockading powers were to be satisfied preferentially out of the 30 per cent. It is further argued, first, that all that the blockading powers could claim by reason of the said service would be not the privilege of a right of priority, but only, in accordance with the principles of "*negotiorum gestio*," recovery of the expenses incurred in their military operations; secondly, that the blockading powers had, it would seem, waived such claim for damages, because they had not preferred it against Venezuela, and, thirdly, that they had, moreover, received ample compensation by the payment of their so-called claims of the first class.

In reply to these arguments we wish to point out that the service rendered to the other creditor powers appears to be of value to them, even in case preferential treatment should be accorded the blockading powers, because it was only in consequence of the action taken by the blockading powers that Venezuela consented to make arrangements also with the other creditor powers for the settlement of their claims and to grant to them a security which later on will ipso facto become available for them. The other creditor powers can not possibly rely on the principles governing *negotiorum gestio*, because they never offered to refund to the blockading powers the expenses incurred. Besides, if the said principles were to be applied, there is no reason why the blockading powers, on account of not having preferred that claim against Venezuela, should be considered as having lost their right to ask compensation for their expenses from the other creditor powers. It is not Venezuela but the other creditor powers who lay claim to the benefits which have ensued from the operations of the blockading powers. The other creditor powers ought, consequently, to be considered as "*domini negotii*," and to be obliged to refund the expenses incurred. Finally, it is absolutely impossible to admit that the blockading powers, by the payment of their so-called claims of the first class, had received a sufficient compensation for their expenses.

In the first place, the blockading powers have by this payment only obtained what they were entitled to. Besides, it is sufficiently clear from the particulars given under I. 2 of the German case that there is no comparison between the risk and expense incurred during the operations of the blockading powers and the advantages as yet obtained.

3. France asserts that the case of the joint action of the powers against China should be considered as a precedent in favor of granting, in similar cases, equal treatment to all creditor powers. This argument has been explicitly refuted already in the reply to the case of the Venezuelan Government under II. 4. In any case this so-called precedent can not do away with the fundamental principle of international law that only the belligerents themselves are allowed to directly derive privileges from the result of war.

4. It is pointed out by France that a decision in favor of the blockading powers would have the dangerous effect of largely encouraging the adoption of coercive measures against countries of doubtful solvency and of impairing thereby the benevolent intentions underlying the convention of The Hague of July 29, 1899. Against this argument we may refer to the statements under II. 7 of the reply to the case of the Venezuelan Government.

III. It does not appear from the case of the French Government for which of the French claims satisfaction out of the 30 per cent is demanded. It would therefore, in the opinion of His Imperial Majesty's Government, be incumbent on France to furnish the necessary particulars in order to enable the tribunal to decide whether her claims can be considered as "similar claims" in the sense of article 5, paragraph 1, of the German protocol of February 13, 1903, and whether any of those claims enjoy any preference or pledges of revenue as provided for in article 1, paragraph 3, of the German agreement of May 7, 1903. According to the reports received by His Majesty's Government the claims submitted to the Franco-Venezuelan commission fall under three different heads, (1) those comprising the damages caused by the revolution of 1892, (2) other claims of an earlier date than May 23, 1899, and (3) the claims of still later origin. The first two groups come under the Paris protocol of February 19, 1902 (published in the Journal Officiel of April 30, 1902), while the third group falls under the provisions of the Washington protocol of February 27, 1903. Only with regard to the third group would it seem to be possible at all for France to claim satisfaction out of the 30 per cent, because the other claims, according to article 3 of the Paris protocol, are already paid or are, in future, to be paid by bonds of a so-called diplomatic debt.

The proposition of the French Government to impose, in conformity

with article 5 of the agreements of May 7, 1903, the costs of the arbitration on the blockading powers, is not permissible, because, according to the said article 5, the decision of the tribunal in respect of costs is subject to the general provision laid down in article 57 of the convention of The Hague of July 29, 1899, according to which each party has to bear its own expenses and to pay an equal share of the costs incurred by the tribunal.

**D.—REPLY TO THE CASE OF THE DUTCH GOVERNMENT.**

In the case of the Dutch Government it is argued that neither according to the principles of international law or civil law, nor according to international practice, nor with regard to the results of the negotiations with Venezuela, could the claim of the blockading powers be considered as justified. These contentions having been already sufficiently refuted in the German case and in the German replies to the cases of the other powers, it does not seem to be necessary to discuss them again.

**E.—REPLY TO THE CASE OF THE SWEDISH-NORWEGIAN GOVERNMENT.**

The case of the Swedish-Norwegian Government corresponds exactly to the case of the Dutch Government. We beg, therefore, to refer to the remarks made on that case.

**F.—REPLY TO THE CASE OF THE SPANISH GOVERNMENT.**

I. The Spanish Government has, for the purpose of refuting the claims of the blockading powers, on the whole, referred to the same arguments which are advanced in the cases of other powers. Sufficient answer is therefore contained in the German replies to these latter cases.

II. Special discussion is only required with regard to the contention in the Spanish case that the claim for preferential treatment preferred by the blockading powers implied an infringement of the most-favored-nation treatment expressly granted to Spain in her correspondence with Venezuela in the middle of December, 1902. This argument is not admissible for the reason that the 30 per cent subsequently offered to the blockading powers are not mentioned at all in the said correspondence, and therefore have also not been the subject of any convention or agreement. On the ground of the most-favored-nation treatment accorded to her Spain could, consequently, only demand that Venezuela should, for the satisfaction of her claims, assign to her a sufficient amount of other resources. The blockading powers would have no objection whatever against such satisfaction being granted to Spain.

**G.—REPLY TO THE CASE OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA.**

I. Out of the arguments expounded in the case of the United States the following require some special discussion :

1. The United States point out that the services rendered by them in the settling of the disputes between the blockading powers and Venezuela were alone sufficient to entitle them to equal treatment with the blockading powers. It is not intended in the least to detract from the merits of the United States. But in default of any special promise their efforts can not give them any claim to preferential treatment. It is, furthermore, hardly to be presumed that they rendered their services for the purpose of securing for themselves a title to the privileges gained by the blockading powers.

2. The United States argue that, in addition to the precedent of the joint action of the powers against China, the following precedents might also be adduced in support of their claim for equal satisfaction out of the 30 per cent: The agreements for regulating the Turkish and the Egyptian debt, the equal treatment accorded to the loan creditors in Haiti and Guatemala, and the regulation of the light-house dues in Haiti. But all these so-called precedents are even less to the point than the case of the action against China. What distinguishes them from the case of Venezuela is that in none of these cases a claim for preferential treatment had been preferred by anybody, that none of the countries concerned had any interest in preferential treatment, and that none of them would have been able to show a title to such treatment.

3. According to the contention of the United States the blockading powers, far from rendering any service to the other creditor powers by their operations against Venezuela, have, on the contrary, injured the interests of those powers by such action. But the statement of the United States that Venezuela would, even without being compelled by coercive measures, have fulfilled her obligations, is not supported by any proof; on the contrary, it is apparent from the behavior of Venezuela toward the blockading powers as well as from the fate of other claims preferred against Venezuela, for instance, of those stated in the American case, that without any doubt no favorable result was to be expected from the further employment of peaceful methods. The injury suffered by the United States is said to have consisted in the delay caused in the payment of the American claims, and in the interruption of commerce and communication. It will, of course, never be possible in case of war to entirely avoid injury to the interests of neutral powers. But in the present case such injury was reduced to the lowest possible proportions, since the whole action was confined to a blockade of less than two months' duration. These insignificant inconveniences are, however, more

than counterbalanced by the advantage pointed out under II of the German case, namely, that by the said action Venezuela was, to the benefit of all creditor powers, induced to recognize the principles of international law.

4. The United States argue that the 30 per cent offered by Venezuela had to be regarded as a sufficient security for the blockading powers, even in case the other creditor powers were allowed to participate therein. The nature of this so-called security would seem to be sufficiently explained in the German case under I. 1. As to the statement of the United States that those claims of the blockading powers which had to be satisfied out of the 30 per cent were, in opposition to their so-called claims of the first class, of a speculative nature and might, therefore, without injustice to them, be subjected to some delay in payment, we beg to point out that the claims now in question are likewise to a great extent caused by acts of violence on the part of the Venezuelan Government and its officials and that for the far greater loan claims of Germany and Great Britain satisfaction out of the 30 per cent is not demanded at all.

II. In a supplement to the American case statements have been made by one of the counsel of the United States respecting the question of the justification of the operations and claims of the blockading powers and concerning the reasons for the raising of the blockade and for the appeal to the Tribunal of Arbitration. These statements are not within the sphere of juridical discussion, but of an entirely political character; they are, besides, not signed by the agent of the United States and, therefore, not to be accepted as utterances of the American Government, which is all the more reason they should not require any reply in this place.

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#### SUPPLEMENT.

In addition to the conclusion of the German case is to be pointed out, that the German-Venezuelan commission has, in the meanwhile, fixed the amount of the claims mentioned in article 3 of the German protocol of February 13, 1903, at 1,673,527 marks. In the name of His Majesty's Government it is therefore respectfully submitted that the said amount be taken as a basis in deciding the claims of the blockading powers to the 30 per cent of the customs revenues of La Guaira and Puerto Cabello.

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[Translation.]

#### A.—*Entgegnung auf den Schriftsatz der Venezolanischen Regierung.*

I. Der von Deutschland, Grossbritannien und Italien erhobene Anspruch, wegen ihrer Reklamationen gegen Venezuela aus den für



dessen Gläubiger überwiesenen 30 Procent der Zolleinkünfte von La Guaira und Puerto Cabello vor den übrigen Gläubigermächten befriedigt zu werden, wird von der Venezolanischen Regierung aus folgenden allgemeinen Gesichtspunkten bestritten: Die Entscheidung der Frage, ob den Blockademächten ein solches Vorrecht gebühre, hänge in erster Linie davon ab, ob die von ihnen gegen Venezuela unternommene Aktion als eine berechnete anzusehen sei. Denn nur in diesem Falle könne das Haager Schiedsgericht, das zur Förderung des Friedens eingesetzt worden sei, den Blockademächten auf Grund des von ihnen geführten Krieges Vorteile zuerkennen. Tatsächlich sei aber dieser Krieg zu Unrecht geführt worden, da weder die Forderungen der Blockademächte, noch die Art und Weise ihres Vorgehens berechnete gewesen seien. Im einzelnen wendet sich sodann der venezolanische Schriftsatz gegen die Forderungen und das Vorgehen Grossbritanniens, indem er ausführt, dass jede der Blockademächte für die Handlungen ihrer Verbündeten mitverantwortlich sei, dass es mithin zum Nachweise der Unrechtmässigkeit der ganzen Aktion genüge, wenn nur das Vorgehen Grossbritanniens als unberechnete anzusehen sei.

Auf diese Ausführungen wird nachstehendes erwidert. Das Schiedsgericht selbst dürfte sich schwerlich für berufen erachten, eine Entscheidung darüber abzugeben, ob die Aktion der Blockademächte zu Recht oder zu Unrecht erfolgt ist. Auch kann von dieser Frage die rechtliche Beurteilung ihres Anspruchs nicht abhängen. Sollte die Frage aber einer Erörterung bedürfen, so würden die Blockademächte nicht den geringsten Grund haben, eine Prüfung ihrer Forderungen und ihres Vorgehens gegen Venezuela zu scheuen.

Soweit Deutschland in Betracht kommt, sind in dem venezolanischen Schriftsatze nähere Angaben nicht gemacht worden, so dass sich nach dieser Richtung ein Eingehen auf Einzelheiten erübrigt. Wegen der Berechnung der deutschen Forderungen dürfte der Hinweis auf Artikel 1 des deutschen Friedensprotokolls vom 13. Februar 1903 genügen, wonach die Venezolanische Regierung im Prinzip die von der Deutschen Regierung erhobenen Reklamationen als berechnete anerkannt hat. Zu dem Vorgehen gegen Venezuela ist aber Deutschland nicht etwa dadurch veranlasst worden, dass die Venezolanische Regierung die Forderungen deutscher Gläubiger nicht bezahlte, sondern, wie in dem deutschen Ultimatum vom 7. Dezember 1902 ausgeführt ist, lediglich durch den Umstand, dass Venezuela die diplomatische Behandlung der durch Gewaltakte seiner Organe entstandenen Reklamationen deutscher Untertanen endgültig verweigerte. Dass eine solche Verweigerung vorlag, ergibt sich zur Genüge aus dem in dem Anhang zu dem venezolanischen Schriftsatze in Uebersetzung abgedruckten Schriftwechsel zwischen dem deutschen Vertreter in Caracas und der Venezolanischen Regierung;



insbesondere wird auf folgende Stellen in den Schreiben der Regierung verwiesen:

Schreiben vom 23. Juli 1901.

\* \* \* Sie (der deutsche Geschäftsträger) bestehen darauf, dass die Mitwirkung der Kaiserlichen Behörden bei der Prüfung der Forderungen gewährleistet sein müsse, Venezuela dagegen behauptet kraft seiner Souveränität und auf Grund seiner inneren Gesetzgebung, dass eine solche Mitwirkung gänzlich unzulässig sei. \* \* \* Ich handele im Auftrage des höchsten Staatsbeamten, wenn ich der Hoffnung Ausdruck gebe, dass Sie auf Grund nochmaliger Erwägung der Angelegenheit die Gründe als berechtigt anerkennen werden, aus denen die Venezolanische Regierung es ablehnt, der beabsichtigten Einmischung der Gesandtschaft zuzustimmen. \* \* \*

Schreiben vom 8. Januar 1902.

\* \* \* Die von der (Venezolanischen) Regierung angeführten Gründe, aus denen sie es für unmöglich erklärt, diejenigen Angelegenheiten, welche der inneren Gesetzgebung der Republik angehören, diplomatisch zu behandeln, sind von der Gesandtschaft bis jetzt nicht in Erwägung gezogen und noch viel weniger widerlegt worden. \* \* \*

Schreiben vom 9. Mai 1902.

\* \* \* Der Präsident ist der Ansicht, dass es genügen werde, eine kurze Erläuterung \* \* \* zu geben, damit die Regierung der Republik und die Gesandtschaft vollkommen einer Meinung seien über die juristische Unmöglichkeit, die diplomatische Einmischung in Angelegenheiten zuzulassen, die, wie die vorliegende, durch die Gesetze des Landes geregelt seien. \* \* \* Für Venezuela würde die Anerkennung des Grundsatzes, dass der diplomatische Weg vor der Anwendung seiner Gesetze den Vorzug verdiene, einer Verletzung der Privilegien seiner unbestreitbaren Souveränität gleichkommen. \* \* \*

Hiernach hat die Venezolanische Regierung ausdrücklich erklärt, dass die Regelung der fremden Reklamationen ausschliesslich ihrer eigenen Gesetzgebung unterstehe, dass diese aber die Mitwirkung einer fremden Instanz nicht vorsehe und dass daher jede diplomatische Einmischung unzulässig sei. Dementsprechend hat Venezuela alle Versuche Deutschlands, die Reklamationen auf dem diplomatischen Wege zu erledigen, zurückgewiesen und insbesondere die Vorschläge auf Ueberweisung der Angelegenheit an das Haagen Schiedsgericht oder auf Prüfung der deutschen Forderungen durch gemischte Kommissionen nicht einmal einer Antwort gewürdigt. Die Behauptung in dem venezolanischen Schriftsatze, dass Venezuela durch die Revolution des General Matos verhindert worden sei, auf diese Vorschläge näher einzugehen, wird kaum ernsthaft zu nehmen sein. Denn die deutschen Vorschläge sind bereits am 16. Juli 1901 erfolgt, während die Revolution des General Matos erst Ende November 1901 ausbrach; auch hatte die Venezolanische Regierung während der anderthalb Jahre bis zum Beginne der Aktion ausreichend Zeit und Gelegenheit, diese Vorschläge in ihren ausführlichen Erwidern an den deutschen Vertreter zu beantworten. Nach alledem hat Deutschland jedes friedliche Mittel ver-

sucht, bevor es seine gerechten Ansprüche auf dem Wege der Selbsthilfe durchgesetzt hat.

Was die Berechtigung der Forderungen und des Vorgehens Grossbritanniens betrifft, so bleibt die Erwiderung auf die Angriffe in dem venezolanischen Schriftsatze selbstredend in erster Linie der Britischen Regierung vorbehalten. Doch steht die Kaiserliche Regierung nicht an, zu erklären, dass sie sich vor dem Eintritt in die gemeinsame Aktion auch von der Berechtigung der Britischen Forderungen überzeugt hat.

II. Der Anspruch der Blockademächte wird von der Venezolanischen Regierung ferner aus folgenden Einzelgründen bestritten.

1. Venezuela behauptet, dass Deutschland vor der Aktion einen Anspruch auf bevorrechtigte Behandlung nur für seine inzwischen bezahlten Reklamationen aus den Bürgerkriegen von 1898 bis 1900, nicht aber für seine übrigen Forderungen erhoben habe, somit einen solchen auch jetzt nicht geltend machen könne. Diese Behauptung ist nicht zutreffend. Deutschland hat in seinem Ultimatum vom 7. Dezember 1902 für seine übrigen Forderungen zwar nicht, wie für die aus den Bürgerkriegen von 1898 bis 1900 eine sofortige Bezahlung verlangt, wohl aber eine ausreichende Sicherstellung gemäss der Entscheidung einer Schiedsinstanz. Nur eine solche Sicherstellung aber wird beansprucht. Wenn dieser Anspruch sich als Anspruch auf bevorrechtigte Befriedigung darstellt, so hat dies lediglich darin seinen Grund, dass die zur Verfügung gestellten 30 Procent nur dann eine genügende Sicherheit bieten, wenn sie ausschliesslich den Blockademächten, nicht aber auch allen übrigen Gläubigermächten zugute kommen.

2. Venezuela behauptet, dass Deutschland dem Vorschlage des venezolanischen Bevollmächtigten Bowen, wonach die zur Verfügung gestellten 30 Procent zur Befriedigung aller Gläubigermächte dienen sollten, ausdrücklich zugestimmt habe und an diese Zustimmung gebunden sei. Diese Behauptung ist unrichtig. Aus dem in der Anlage zu dem venezolanischen Schriftsatz abgedruckten Schriftwechsel zwischen den Vertretern der Blockademächte und Herrn Bowen ergibt sich vielmehr folgendes. Am 23. Januar 1903 hatte Herr Bowen vorgeschlagen, dass alle Reklamationen gegen Venezuela aus den 30 Procent der Zolleinkünfte von La Guaira und Puerto Cabello bezahlt werden sollten: Dieser Vorschlag, aus dem nicht mit Bestimmtheit hervorging, ob es sich nur um alle Reklamationen der Blockademächte oder auch um die Forderungen der übrigen Gläubigermächte handelte, von denen zwischen Deutschland und Venezuela bis dahin noch gar nicht die Rede gewesen war, ist von dem deutschen Vertreter nicht etwa angenommen, sondern, wie verabredet war, zunächst der Kaiserlichen Regierung mitgeteilt worden. Inzwischen hatte der deutsche Vertreter am 24. Januar

Herrn Bowen eine Denkschrift mit den von Deutschland aufgestellten Forderungen vorgelegt, worin u. a. die Sicherstellung der in Rede stehenden deutschen Ansprüche gemäss der Entscheidung einer Schiedsinstanz verlangt wurde. Herr Bowen hat diese Denkschrift an demselben Tage unter Annahme der darin aufgestellten Forderungen und mit der ausdrücklichen Erklärung unterzeichnet, dass wegen der von ihm angebotenen Sicherstellung die Antwort der Deutschen Regierung abgewartet werden müsse, damit also die Notwendigkeit der Zustimmung Deutschlands zu seinem Vorschlag anerkannt. Den Vorschlag wegen der Sicherstellung hat er erst bei den weiteren Verhandlungen, und zwar am 25. Januar mündlich und am 27. Januar schriftlich dahin erläutert, dass die 30 Procent nicht nur für die Blockademächte, sondern für sämtliche Gläubigermächte bestimmt sein. Der deutsche Vertreter hat darauf im Auftrage seiner Regierung bestimmt erklärt, dass die 30 Procent nur dann als eine genügende Sicherheit angenommen werden könnten, wenn sie ausschliesslich den Blockademächten zugute kämen, und hat demgemäss gegen die Ueberweisung der 30 Procent an sämtliche Gläubigermächte protestiert. Dass dieser Protest tatsächlich erfolgt ist, geht deutlich aus den von Herrn Bowen am 30. Januar schriftlich gemachten "Einwendungen" hervor, die schliesslich dazu führten, die Frage der Entscheidung des Haager Schiedsgerichtes zu unterbreiten.

3. Venezuela behauptet, dass nach völkerrechtlichen Grundsätzen alle Nationen auf eine gleichmässige Behandlung Anspruch hätten, dass mithin die Blockademächte eine bevorzugte Befriedigung aus den 30 Procent nur auf Grund eines besonderen Titels verlangen könnten. Eben diese Titel sind in den Schriftsätzen der Blockademächte ausführlich dargelegt worden. Im übrigen haben diese selbstredend nicht das Geringste dagegen einzuwenden, wenn Venezuela die anderen Gläubigermächte aus sonstigen Einnahmequellen in gleicher Weise befriedigt. Sie verlangen eine bevorzugte Befriedigung aus den 30 Procent nur deshalb, weil ihnen sonst die von Venezuela zugesicherte Befriedigung überhaupt nicht zu teil werden würde.

4. Venezuelan behauptet, dass in dem einzigen bisher vorgekommenen Präzedenzfalle, nämlich der gemeinsamen Aktion der Mächte gegen China, die Reklamationen sämtlicher Nationen völlig gleichmässig behandelt seien, obwohl beispielsweise Spanien und Belgien an den militärischen Massnahmen nicht teilgenommen hätten. Demgegenüber ist zunächst hervorzuheben, dass dieser einzelne Fall zur Aufstellung eines entsprechenden völkerrechtlichen Grundsatzes nicht ausreicht, zumal da hier alle Mächte im gemeinsamen Einverständnis zugelassen worden sind, während in Venezuela die Blockademächte gegen die Zulassung der übrigen Gläubigermächte alsbald Protest erhoben haben. Sodann haben bei der Wiederherstellung der Ordnung in China fast alle beteiligten Mächte nach Massgabe ihrer

Kräfte mitgewirkt: so hat auch Belgien mit der Ausrüstung einer Expedition begonnen und ein Waffeneinfuhrverbot gegen China erlassen.

Ferner handelte es sich in China nicht um eine Kriegsaktion gegen die dortige Regierung zur Durchsetzung bestimmter Ansprüche, sondern den Anlass zu der gemeinsamen Aktion bildete der Angriff auf die Gesandtschaften sämtlicher Mächte—also nicht eine einfache Verletzung des Völkerrechts, sondern die denkbar flagranteste Verleugnung jeder völkerrechtlichen Grundlage, an deren Wiederherstellung alle Kulturmächte unmittelbar interessiert waren und für welche die an der Aktion beteiligten Mächte mit voller Absicht als Mandatare der übrigen Mächte eingetreten sind; die Entschädigungsfrage war nur ein Akzessorium und konnte deshalb, um die Solidarität aller Mächte gegen China zum Ausdruck zu bringen, nicht anders behandelt werden als die Hauptfrage. Dagegen befanden sich Venezuela gegenüber die Blockademächte im Kriegszustand; es handelte sich um die Durchsetzung bestimmter Ansprüche, und es handelt sich jetzt um die Frage, ob die in Venezuela unter dem Drucke der Kriegsaktion abgetretenen Staatsseinkünfte unter Verkürzung der Blockademächte auch allen übrigen Gläubigern Venezuelas ohne weiteres zugute kommen sollen. Endlich hat China zur Befriedigung der sich an die Expedition anschliessenden Entschädigungsansprüche nicht, wie Venezuela, gewisse für die Befriedigung aller derartigen Ansprüche völlig unzureichende Einkünfte angewiesen, sondern die Mittel zu einer im allgemeinen auskömmlichen Begleichung aller Ansprüche der fremden Mächte zur Verfügung gestellt; durch diese Mittel werden insbesondere auch die den Mächten durch ihre Aktion erwachsenen Kosten gedeckt, während in Venezuela den Blockademächten diese Kosten nicht erstattet worden sind.

5. Venezuela behauptet, dass zwei Umstände die Blockademächte von ihrem Vorgehen hätten abhalten sollen: einmal hätten sie bei ihrer grossen Uebermacht auf eine gütliche Erledigung ihrer Reklamationen rechnen können und daher das äusserste Mittel des Krieges nicht anzuwenden brauchen; sodann seien die Forderungen, die zu der Aktion geführt hätten, von den Mächten einseitig festgesetzt worden, während sie zu dem Kriege höchstens dann hätten Anlass geben können, wenn sie vorher unter Zuziehung Venezuelas geprüft und festgestellt worden wären. Beide Gesichtspunkte treffen nicht zu. Wie unter 1 ausgeführt worden ist, hatte Venezuela eine Regelung der deutschen Reklamationen auf dem diplomatischen Wege endgültig abgelehnt, so dass Deutschland friedliche Mittel nicht mehr zu Gebote standen. Ebensowenig war eine Zuziehung Venezuelas bei Prüfung der Reklamationen möglich, weil es die entsprechenden deutschen Vorschläge gleichfalls zurückgewiesen hatte. Der Kaiserlichen Regierung blieb daher nichts anderes

übrig, als diese Reklamationen durch ihre eigenen Organe, und zwar durch ihren Vertreter in Caracas sowie durch die Rechtsabteilung des auswärtigen Amtes prüfen zu lassen, wobei übrigens die angemeldeten Reklamationen erheblich herabgesetzt worden sind. Der ablehnenden Haltung Venezuelas gegenüber von weiteren Schritten Abstand zu nehmen, hätte der Würde Deutschlands nicht entsprochen. Denn kein Staat kann darauf verzichten, seine Angehörigen, denen ein offenes Unrecht zugefügt worden ist, vor fremder Willkür in Schutz zu nehmen. Auch würde der von Venezuela eingenommene Standpunkt zu dem unhaltbaren Schlusse führen, dass schwache Staaten an die Regeln des Völkerrechts nicht in demselben Masse wie mächtige Nationen gebunden sind.

6. Venezuela behauptet, dass Grossbritannien auf Grund des Haager Schiedsabkommens vom 29. Juli 1899 die Pflicht gehabt habe, vor Eintritt in die Aktion die schiedsrichterliche Erledigung der Angelegenheit in Vorschlag zu bringen. Zunächst ist es nicht ersichtlich, wie Venezuela aus einem Vertrage, dem es selbst nicht beigetreten ist, Rechte herleiten will, ganz abgesehen davon, dass dieser Vertrag keineswegs die Anrufung eines Schiedsgerichts für obligatorisch erklärt hat. Weiter aber hat es seinerseits den ihm von Deutschland gemachten Vorschlag auf schiedsrichterliche Erledigung zurückgewiesen, so dass die beiden anderen Blockademächte keinen Anlass hatten, mit einem entsprechenden Vorschlage hervorzutreten, dessen Ablehnung ohne weiteres vorauszusehen war.

7. Venezuela behauptet, dass es dem Charakter des Haager Schiedsgerichts als einer Einrichtung zur Verhütung des Krieges widerspreche, Vorteile für eine kriegerische Aktion zuzubilligen. Diese Behauptung bedarf kaum einer Widerlegung. Denn das Schiedsgericht hat auch die aus dem Kriege sich ergebenden Rechte zu berücksichtigen und wird durch deren gerechte Beurteilung die Sache des Friedens am besten fördern. Die Blockademächte haben sich gerade im Hinblick auf die Entscheidung des Haager Schiedshofs dazu verstehen können, die Blockade aufzuheben, ohne ihre Forderungen auch in diesem Punkte tatsächlich durchgeführt zu haben. Sollte die Entscheidung gegen sie ausfallen, so würde dies in künftigen ähnlichen Fällen nicht dazu dienen können, eine zu einer Kriegsaktion schreitende Macht zur Einstellung ihrer Aktion vor tatsächlicher Sicherstellung ihrer gesamten Ansprüche zu veranlassen. Eine den Blockademächten günstige Entscheidung würde daher auch für die Zukunft nur zur Einschränkung des Krieges beitragen und damit die Sache des Friedens fördern.

Venezuela führt schliesslich und zwar anscheinend zum Beweise seiner Uneigennützigkeit aus, dass es pekuniär an dem Ausgange des Schiedsspruchs nicht interessiert sei. Dies ist ein Irrtum. Denn im Falle einer für die Blockademächte günstigen Entscheidung wird es



nicht umhin können, die übrigen Gläubigermächte aus anderen Staatseinnahmen oder in sonstiger Weise zu befriedigen.

**B.—ENTGEGNUNG AUF DEN SCHRIFTSATZ DER BELGISCHEN REGIERUNG.**

I. Die Gesichtspunkte, aus denen die Belgische Regierung den Anspruch der Blockademächte bestreitet, sind in den Schriftsätzen anderer Mächte ausführlicher dargelegt und in den deutschen Entgegnungen auf diese Schriftsätze eingehend widerlegt worden. Es genügt daher im allgemeinen auf die Ausführungen in diesen Entgegnungen Bezug zu nehmen.

II. Einer besonderen Besprechung bedarf nur die von der Belgischen Regierung angemeldete Reklamation der ehemaligen Gesellschaft der Wasserwerke von Caracas. Der dieser Reklamation zu Grunde liegende Tatbestand ergibt sich im allgemeinen aus der mit dem belgischen Schriftsatz überreichten Sachdarstellung. Danach hat die ehemalige belgische Gesellschaft der Wasserwerke von Caracas im Jahre 1895 die ihr erteilte Konzession nebst allen ihren Werken und Anlagen der Venezolanischen Regierung für einen Betrag von rund 10,500,000 Bolivars in Titeln der sogenannten Wasserwerksanleihe übertragen. Für den Dienst dieser Anleihe wurden vertragsmässig der Reinertrag aus dem Betriebe der Wasserwerke und der Ueberschuss der zur Bezahlung der inneren Schuld festgesetzten Einkünfte bestimmt. Von diesen Einnahmequellen haben nach den venezolanischen Budgets allein die Einkünfte aus dem Wasserwerke mehr als die für den Anleihedienst erforderlichen Beträge ergeben. Die Forderungen aus dieser Anleihe, deren Dienst seit einigen Jahren eingestellt worden ist, sind numehr von der belgisch-venezolanischen Kommission auf 10,565,199.44 Bolivars festgesetzt und von der Belgischen Regierung zur Befriedigung aus den 30 Procent angemeldet worden. Gegen diesen Antrag wird aus zwei Gründen Einspruch erhoben.

1. Zunächst sollen nach Artikel 5, Abs. 1, des deutschen Friedensprotokolls vom 13. Februar 1903 die 30 Procent nur zur Befriedigung der in Artikel 3 bezeichneten deutschen Reklamationen sowie der "gleichartigen Forderungen" anderer Mächte dienen. Die belgische Forderung aus der Wasserwerksanleihe kann daher nur dann zur Befriedigung aus den 30 Procent zugelassen werden, wenn sie als gleichartige Forderung im Sinne des erwähnten Artikel 5 anzusehen ist. Dies ist aber offenbar nicht der Fall, da, wie sich aus Artikel 6 des deutschen und des britischen Protokolls ergibt, die venezolanischen Anleihen aus den 30 Procent nicht befriedigt werden sollen; die Zulassung der belgischen Anleihegläubiger würde sich daher als eine vertragswidrige Benachteiligung aller aus den 30 Procent zu befriedi-



genden Gläubiger darstellen. Nun behauptet allerdings die Belgische Regierung, dass das Schiedsgericht die Forderungen der Gläubigermächte so wie sie von den gemischten Kommissionen anerkannt seien, zur Befriedigung aus den 30 Procent zulassen müsse. Diese Behauptung ist indes nicht zutreffend, da über das in Artikel 5 des deutschen Protokolls aufgestellte Erfordernis der Gleichartigkeit selbstredend nicht die gemischte Kommission sondern das Schiedsgericht zu entscheiden hat. Anderenfalls wäre Venezuela in der Lage gewesen, durch entsprechende Abmachungen mit anderen Mächten den gemischten Kommissionen beliebige Forderungen zuzuweisen und dadurch deren Bezahlung aus den 30 Procent herbeizuführen.

2. Die belgische Forderung wird ferner deshalb nicht berücksichtigt werden können, weil nach Artikel 1, Abs. 3, der Schiedsabkommen bei der Verteilung der 30 Procent alle einer Gläubigermacht sonst zugute kommenden Vorrechte oder Pfandrechte in Betracht zu ziehen sind. Nun ist aber die Wasserwerksanleihe durch die vertragsmässig zugesicherten Einkünfte in mehr wie ausreichender Weise gesichert, so dass sie schon aus diesem Grunde bei der Verteilung der 30 Procent ausfallen muss. Wenn Venezuela, wie die Belgische Regierung behauptet, die fraglichen Einkünfte vertragswidrig zu anderen Zwecken verwendet, so steht es Belgien frei, die Venezolanische Regierung zur Erfüllung ihrer Verpflichtungen in geeigneter Weise anzuhalten. Dagegen kann Belgien aus diesem Umstande nicht das Recht herleiten, die den Anleihegläubigern zustehenden Vorrechte als weggefallen zu behandeln und daraufhin Befriedigung aus den 30 Procent zu beanspruchen. Hieran würde auch nichts geändert werden, wenn Belgien, wie es in Aussicht stellt, auf diese Vorrechte verzichtet, da es durch einen solchen Verzicht selbstredend nicht in die Rechte der übrigen Gläubiger eingreifen kann.

#### C.—ERWIDERUNG AUF DEN SCHRIFTSATZ DER FRANZÖSISCHEN REGIERUNG.

I. Der Anspruch der Blockademächte wird von der Französischen Regierung aus folgenden allgemeinen Gesichtspunkten bestritten: Venezuela habe die 30 Procent der Zolleinkünfte von La Guaira und Puerto Cabello allen Gläubigermächten gemeinsam abgetreten. Die Blockademächte befinden sich daher nicht etwa im Besitze dieser Einkünfte, sondern hätten daran keine besseren Rechte wie die übrigen Gläubigermächte, sofern sie nicht den Nachweis führten, dass ihnen besondere Rechtstitel zur Seite ständen. In Ermangelung solcher Titel seien nach allgemeinen Rechtsgrundsätzen die 30 Procent unter alle Gläubiger gleichmässig zu verteilen; denn nach Völkerrecht seien alle Staaten gleich zu behandeln und bei analoger Anwendung der Grundsätze des Zivilrechts sei gegen Venezuela gewis-

sermassen ein Konkursverfahren eröffnet worden, worin die Forderungen sämtlicher Gläubiger gleichmässig befriedigt werden müssten.

Auf diese Ausführungen wird nachstehendes erwidert: Venezuela hat, wie unten näher ausgeführt werden soll, die 30 Procent nicht allen Gläubigermächten gemeinsam, sondern zunächst nur den Blockademächten, wenn auch mit einer Einschränkung, abgetreten und erst später von dieser Einschränkung zugunsten der übrigen Gläubigermächte Gebrauch gemacht. Es erscheint daher nicht zutreffend, wenn die Ansprüche aller Gläubigermächte auf diese Einkünfte von vornherein als gleichberechtigt bezeichnet werden. Im übrigen sind die von Frankreich verlangten Rechtstitel der Blockademächte in deren Schriftsätzen ausführlich dargelegt worden. Die Analogie des Konkurses passt schon deshalb nicht, weil dieser die Zahlungsunfähigkeit des Schuldners voraussetzt, auch die Verteilung seines gesamten Vermögens zur Folge hat; dagegen ist Venezuela, ausführt, nicht zahlungsunfähig und hat auch nur einen geringen Teil seiner Einkünfte zur Verfügung gestellt. Ferner sind im Konkurse sämtliche Forderungen zu berücksichtigen, während im vorliegenden Falle Deutschland und England die Befriedigung ihrer grössten Forderungen, nämlich der aus den venezolanischen Anleihen von 1881 und 1896, aus den zur Verfügung gestellten 30 Procent überhaupt nicht in Anspruch nehmen.

II. Der Anspruch der Blockademächte wird von der Französischen Regierung ferner aus folgenden Einzelgründen bestritten:

1. Frankreich behauptet, die Blockademächte können aus der von ihnen gegen Venezuela unternommenen Aktion nur insoweit Rechte herleiten, als dadurch nicht Rechte dritter Staaten unmittelbar geschädigt würden; eine solche unmittelbare Schädigung liege aber vor, wenn den übrigen Gläubigermächten die diesen gleichfalls versprochenen 30 Procent entzogen würden. Diese Auffassung ist nicht zu treffend. Das Versprechen wegen der 30 Procent ist von Venezuela zuerst den Blockademächten, und zwar in den Friedensprotokollen vom 13. Februar 1903 gegeben worden. Damals standen den übrigen Gläubigermächten an diesen Einkünften noch keinerlei Rechte zu, so dass ihnen solche von Venezuela nachträglich nur insoweit eingeräumt werden konnten, als dadurch nicht die Rechte der Blockademächte belenträchtigt wurden. Diese Rechte sind daher lediglich nach den von den Blockademächten mit Venezuela geführten Vorverhandlungen zu beurteilen. Danach steht aber, wie bereits in dem deutschen Schriftsatz unter I. 1 ausgeführt worden ist, den Blockademächten ein Anspruch auf die gesamten 30 Procent zu.

2. Frankreich behauptet, die Blockademächte könnten auch aus dem Gesichtspunkte, dass sie durch ihre Aktion gegen Venezuela den übrigen Gläubigermächten einen Dienst erwiesen hätten, den von ihnen geltend gemachten Anspruch nicht herleiten. Denn einmal

sei dieser Dienst nur von geringer Bedeutung, wenn aus den zur Verfügung gestellten 30 Procent die Blockademächte vor den übrigen Gläubigermächten befriedigt würden. Sodann könnten die Blockademächte auf Grund dieses Dienstes keineswegs ein Vorrecht für ihre Forderungen, sondern höchstens nach Analogie der Geschäftsführung ohne Auftrag (*negotiorum gestio*) den Ersatz ihrer Aufwendungen beanspruchen. Auf diesen Anspruch aber hätten sie verzichtet, weil sie ihn nicht Venezuela gegenüber geltend gemacht hätten; auch hätten sie für ihre Aufwendungen einen hinreichenden Ersatz durch die Bezahlung ihrer erstklassigen Forderungen erhalten.

Demgegenüber ist zunächst hervorzuheben, dass der den übrigen Gläubigermächten erwiesene Dienst sich auch im Falle einer bevorrechtigten Behandlung der Blockademächte als wertvoll darstellt, da sich Venezuela nur infolge des Vorgehens der Blockademächte dazu verstanden hat, auch mit den übrigen Gläubigermächten Abkommen zur Regelung ihrer Reklamationen zu treffen und diesen eine später ohne weiteres frei werdende Sicherheit zu gewähren. Die Grundsätze über die *negotiorum gestio* können von den übrigen Gläubigermächten schon deshalb nicht herangezogen werden, weil sie den Blockademächten einen Ersatz für ihre Aufwendungen nicht angeboten haben. Uebrigens ist, wenn diese Grundsätze angewendet werden, nicht ersichtlich, warum die Blockademächte den Anspruch auf Ersatz ihrer Aufwendungen den übrigen Gläubigermächten gegenüber verloren haben sollen, weil sie diese Venezuela gegenüber nicht verlangt haben; denn das Ergebnis der von den Blockademächten aufgewendeten Tätigkeit wird nicht von Venezuela, sondern von den übrigen Gläubigermächten in Anspruch genommen, so dass diese als die Geschäftsherren anzusehen sind und demnach die entstandenen Aufwendungen zu ersetzen haben. Endlich kann auch in keiner Weise zugegeben werden, dass die Blockademächte durch die Bezahlung ihrer sogenannten erstklassigen Forderungen einen genügenden Ersatz für ihre Tätigkeit erhalten haben. Denn abgesehen davon, dass den Blockademächten mit dieser Bezahlung nur ihr Recht zuteil geworden ist, ergibt sich aus den Ausführungen des deutschen Schriftsatzes unter I. 2 zur Genüge, dass Risiko und die Kosten der Aktion zu den bisher erreichten Vorteilen in keinem Verhältnisse stehen.

3. Frankreich behauptet, dass der Präzedenzfall der gemeinsamen Aktion gegen China für eine gleichmässige Behandlung aller Gläubigermächte in derartigen Fällen spreche. Diese Behauptung ist bereits in der Entgegnung auf den venezolanischen Schriftsatz unter II. 4 ausführlich widerlegt worden. Jedenfalls kann dieser angebliche Präzedenzfall nicht den allgemeinen völkerrechtlichen Grundsatz ausser Kraft setzen, dass aus dem Ergebnis eines Krieges unmittelbar nur die Kriegführenden selbst Rechte herleiten können.

4. Frankreich behauptet, dass eine für die Blockademächte günstige Entscheidung die bedenkliche Folge haben werde, im weiteren Umfange Gewaltmassregeln gegen Staaten von zweifelhafter Zahlungsfähigkeit hervorzurufen und dadurch die wohltätigen Absichten des Haager Schiedsabkommens vom 29. Juli 1899 zu beeinträchtigen. Gegenüber dieser Behauptung kann auf die Ausführungen in der Enegegnung auf den venezolanischen Schriftsatz unter II. 7 verwiesen werden.

III. Was die Anträge der Französischen Regierung betrifft, so geht daraus nicht hervor, welche ihrer Forderungen aus den 30 Procent befriedigt werden sollen. Frankreich dürfte daher hierüber noch genauere Angaben zu machen haben, damit das Schiedsgericht feststellen kann, ob diese Ansprüche als "gleichartige Forderungen" im Sinne des Artikel 5, Abs. 1, des deutschen Friedensprotokolls vom 13. Februar 1903 anzusehen sind, sowie ob Vorrechte oder Pfandrechte, wie sie in Artikel 1, Abs. 3, des deutschen Schiedsabkommens vom 7. Mai 1903 vorgesehen sind, einzelnen Reklamationen zu gute kommen. Nach den der Kaiserlichen Regierung zugegangenen Nachrichten zerfallen die der französisch-venezolanischen Kommission unterbreiteten Reklamationen in drei verschiedene Gruppen, von denen die erste die Revolutionsschäden aus dem Jahre 1892, die zweite die übrigen Reklamationen aus der Zeit vor dem 23. Mai 1899, die dritte die später entstandenen Reklamationen umfasst. Die beiden ersten Gruppen fallen unter das Pariser Protokoll vom 19. Februar 1902 (abgedruckt im Journal officiel vom 30. April 1902), die dritte Gruppe unter das Washingtoner Protokoll vom 27. Februar, 1903. Nur wegen der dritten Gruppe dürfte ein Anspruch auf die 30 Procent erhoben werden können, da die übrigen Reklamationen nach Artikel 3 des Pariser Protokolls in Titeln einer diplomatischen Schuld bezahlt worden sind oder bezahlt werden sollen.

Dem Antrage der Französischen Regierung, die Kosten des Schiedsverfahrens gemäss Artikel 5 der Schiedsabkommen vom 7. Mai 1903 den Blockademächten aufzuerlegen, kann schon deshalb nicht entsprochen werden, weil nach diesem Artikel das Schiedsgericht in der Kostenfrage die allgemeine Bestimmung in Artikel 57 des Haager Schiedsabkommens vom 29. Juli 1899 zu berücksichtigen hat. Danach hat aber jede Partei ihre eigenen Kosten und die Kosten des Schiedsgerichts zu gleichem Anteile zu tragen.

#### D.—ENTGEGNUNG AUF DEN SCHRIFTSATZ DER NIEDERLÄNDISCHEN REGIERUNG.

Die in dem Schriftsatze der Niederländischen Regierung aufgestellten Behauptungen, dass der Anspruch der Blockademächte weder nach den Grundsätzen des Völkerrechts oder des Zivilrechts, noch nach der internationalen Praxis, noch nach dem Ergebnisse der

Verhandlungen mit Venezuela begründet sei, sind in dem deutschen Schriftsatz und in den deutschen Entgegnungen auf die Schriftsätze der übrigen Mächte genügend widerlegt worden. Auf diese Behauptungen wird daher nicht näher einzugehen sein.

**E.—ENTGEGNUNG AUF DEN SCHRIFTSATZ DER SCHWEDISCHEN UND NORWEGISCHEN REGIERUNG.**

Der Schriftsatz der Schwedischen und Norwegischen Regierung stimmt mit dem Schriftsatze der Niederländischen Regierung völlig überein. Es wird daher auf die Bemerkung zu diesem Schriftsatze verwiesen.

**F.—ENTGEGNUNG AUF DEN SCHRIFTSATZ DER SPANISCHEN REGIERUNG.**

I. Die Spanische Regierung hat zur Widerlegung des Anspruchs der Blockademächte in allegemeinen auf dieselben Gesichtspunkte hingewiesen, die auch in den Schriftsätzen anderer Mächte vorgebracht worden sind. Die Beantwortung ergibt sich aus den deutschen Entgegnungen auf diese Schriftsätze.

II. Einer besonderen Besprechung bedarf nur die in dem spanischen Schriftsatz aufgestellte Behauptung, dass durch den Anspruch der Blockademächte auf bevorrechtigte Behandlung die Spanien in dem Schriftwechsel mit Venezuela von mitte Dezember 1902 ausdrücklich gewährte Meistbegünstigung verletzt werde. Diese Behauptung ist schon deshalb nicht zutreffend, weil in dem Schriftwechsel die den Blockademächten später angebotenen 30 Procent überhaupt nicht erwähnt sind, somit auch nicht den Gegenstand vertragsmässiger Abmachungen gebildet haben. Die Spanische Regierung würde daher auf Grund der ihr gewährten Meistbegünstigung höchstens den Anspruch erheben können, dass zur Befriedigung ihrer Reklamationen von Venezuela entsprechende andere Einkünfte zur Verfügung gestellt werden. Mit einer solchen Befriedigung Spaniens würden aber die Blockademächte völlig einverstanden sein.

**G.—ENTGEGNUNG AUF DEN SCHRIFTSATZ DER REGIERUNG DER VEREINIGTEN STAATEN VON AMERIKA.**

I. Von den in dem Schriftsatze der Vereinigten Staaten entwickelten Gesichtspunkten bedürfen die nachstehenden einer besonderen Besprechung.

1. Die Vereinigten Staaten behaupten, dass ihnen schon die Verdienste, die sie sich um die Beilegung der Streitigkeiten zwischen den Blockademächten und Venezuela erworben hätten, einen Anspruch auf gleiche Behandlung mit den Blockademächten gewährten. Die Verdienste der Vereinigten Staaten sollen an sich nicht bestritten werden. Doch vermag die von ihnen aufgewendete Tätigkeit in Er-



mangelung entsprechender Zusicherungen irgend welchen Anspruch auf eine bessere Behandlung wie die der übrigen Gläubigermächte nicht zu begründen. Auch dürfte diese Tätigkeit schwerlich zu dem Zwecke erfolgt sein, um sich ein Anrecht an den von den Blockademächten errungenen Vorteilen zu sichern.

2. Die Vereinigten Staaten behaupten, dass für ihren Anspruch auf gleichmässige Befriedigung aus den 30 Procent ausser dem Präzedenzfalle der gemeinsamen Aktion gegen China noch folgende weitere Präzedenzfälle angeführt werden könnten: Die Abkommen zur Regelung der türkischen und der ägyptischen Schuld, die gleiche Behandlung der Anleihegläubiger in Haiti und Guatemala sowie die Regelung der Leuchtfeuerabgaben in Haiti. Alle diese angeblichen Präzedenzfälle passen noch weniger wie der Fall der Aktion gegen China. Von dem Falle mit Venezuela unterscheiden sie sich dadurch, dass in ihnen ein Anspruch auf bevorrechtigte Behandlung von keiner Seite erhoben worden ist, dass an einer solchen Behandlung kein Staat ein Interesse hatte und dass auch kein Staat einen Rechtstitel dafür hätte vorweisen können.

3. Die Vereinigten Staaten behaupten, dass die Blockademächte sich durch ihre Aktion gegen Venezuela irgend welche Verdienste um die übrigen Gläubigermächte nicht erworben, ja diese umgekehrt durch ihr Vorgehen geschädigt hätten. Wenn die Vereinigten Staaten darauf hinweisen, dass Venezuela seinen Verpflichtungen auch ohne Zwangsmassregeln nachgekommen wäre, so ist für diese Behauptung ein Beweis nicht erbracht worden; vielmehr ergibt sich aus dem Verhalten Venezuelas gegenüber den Blockademächten sowie aus dem Verlaufe der gegen Venezuela sonst erhobenen Reklamationen, zum Beispiele der in dem amerikanischen Schriftsatze geschilderten, dass die weitere Anwendung freundlicher Mittel zweifellos nicht zum Ziele geführt hätte. Die den Vereinigten Staaten zugefügten Schäden sollen in der Verzögerung der Zahlung der amerikanischen Reklamationen sowie in der Unterbrechung von Handel und Verkehr bestanden haben. Dass im Falle eines Krieges die Interessen neutraler Staaten in Mitleidenschaft gezogen werden, wird niemals völlig zu vermeiden sein. Im vorliegenden Falle sind diese Schäden auf das denkbar geringste Mass beschränkt worden, da es sich bei der ganzen Aktion lediglich um eine Blockade von noch nicht zweimonatlicher Dauer gehandelt hat. Diese geringen Nachteile aber werden bei weitem durch den Vorteil überwogen, dass, wie in dem deutschen Schriftsatz unter II ausgeführt wird, die durch die Aktion bewirkte Anerkennung der Grundsätze des Völkerrechts durch Venezuela sämtlichen Gläubigern zugute gekommen ist.

4. Die Vereinigten Staaten behaupten, dass die von Venezuela zur Verfügung gestellten 30 Procent als eine ausreichende Sicherheit für



die Blockademächte auch dann angesehen werden müssten, wenn die übrigen Gläubigermächte daran teilnehmen. Wie es mit dieser angeblichen Sicherheit bestellt ist, dürfte in dem deutschen Schriftsatz unter I. 1 zur Genüge dargelegt sein. Wenn aber die Vereinigten Staaten weiter darauf hinweisen, dass die aus den 30 Procent zu befriedigenden Forderungen der Blockademächte im Gegensatze zu ihren sogenannten erstklassigen Forderungen einen spekulativen Charakter trügen und daher unbedenklich eine langsamere Tilgung zuliessen, so ist demgegenüber zu bemerken, dass auch die in Frage stehenden Forderungen zum grossen Teile durch Gewaltakte der Venezolanischen Regierung und ihrer Organe entstanden sind, und dass die Befriedigung der sehr viel höheren Anleiheforderungen Deutschlands und Grossbritanniens aus den 30 Procent überhaupt nicht beansprucht wird.

II. Am Schlusse des amerikanischen Schriftsatzes sind von einem der Rechtsbeistände der Vereinigten Staaten Ausführungen über die Berechtigung der Aktion der Blockademächte und ihrer Forderungen sowie über die Gründe für die Aufhebung der Blockade und die Anrufung des Schiedsgerichts gemacht worden, die sich nicht mehr auf dem rechtlichen, sondern auf dem politischen Gebiete bewegen und einer sachlichen Widerlegung umsoweniger bedürfen, als sie die Unterschrift des Agenten der Vereinigten Staaten nicht tragen und daher als Acusserungen der Amerikanischen Regierung nicht wohl angesehen werden können.

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#### NACHTRAG.

Zu dem Antrag in dem deutschen Schriftsatze (S. 17) wird noch ergänzend bemerkt, dass inzwischen die deutsch-venezolanische Kommission die in Artikel 3 des deutschen Friedensprotokolls vom 13. Februar 1903 erwähnten Ansprüche auf 1,673,527 Mark festgesetzt hat. Es wird daher beantragt, diesen Betrag der Entscheidung über die Ansprüche der Blockademächte auf die 30 Procent der Zolleinkünfte von La Guaira und Puerto Cabello zu Grunde zu legen.

## COUNTER CASE ON BEHALF OF ITALY.

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1. The counsel of the Italian Government is not in the least desirous to analyze the considerations set forth in the preliminary examination of the question on behalf of Venezuela, as such a fact would only entail a loss of time.

The said counsel has already declared that the Republic of Venezuela is not, and can not, be a party in the present question, inasmuch as the controversy is simply and purely among the creditor powers and not between any of these and the said Republic.

2. But since Mr. Bowen on behalf of the United States of America agreed to accept the arguments propounded by Mr. MacVeagh in the said pamphlet, and the other counsel adopted more or less his same arguments, it is necessary to refute the considerations embodied in the said examination, although that refutation might at first sight seem superfluous, as those arguments are entirely demolished by the actual facts emerging from the documents annexed to the preliminary examination itself.

### II.

3. The allegation made by Mr. MacVeagh that the "three great powers chose voluntarily to associate themselves in alliance in conducting the war" is without foundation, because the counsel for Venezuela admitted that Germany had proposed to have recourse to arbitration.

The said proposal is as follows:

The Venezuelan Government on the one part, and the Imperial legation on the other, would each name an arbitrator so that both would jointly examine the claims of German subjects growing out of the civil war. <sup>a</sup>

Learned counsel has, however, forgotten that the Government of His Majesty the King of Italy and the Italian Parliament since 1861 had introduced the clause as to acceptance of arbitration; which fact appears in the documents annexed to the said preliminary examination. The article says:

For the greater security of the citizens and subjects of both the high contracting parties it has been stipulated that if unfortunately friendship between the two contracting parties shall be interrupted, such citizens and subjects residing

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<sup>a</sup> Note addressed to the Most Excellent Dr. Eduardo Blanco, by Mr. Bilgrim Baltazzi, minister of the Imperial legation of Germany in Venezuela.

in the territory of the other shall have the right to remain there, and to continue without any interruption whatever to carry on their occupations, provided that they shall behave peaceably and obey the laws of the country. Their effects and properties, whether they are intrusted to private individuals or to the State, shall not be liable to seizure or sequestration, or to any burden other than those which are imposed on such effects or properties belonging to citizens and subjects of the country where they reside. However, with a view to avoiding so great calamity, the contracting parties have stipulated that if their mutual relations of friendship shall unfortunately be interrupted they shall never have recourse to the fatal use of arms unless the difference shall previously have been submitted to the decision of a friendly and neutral nation, whose decision shall be obligatory upon them.<sup>a</sup>

4. According to this article the minister of His Majesty the King of Italy, on the 11th of December, 1902, asked "the Government of the Republic to be good enough to declare itself disposed to give to such claims the attention which may put an end to further discussion, accepting the opinion of a mixed commission." In the same note the Italian minister, in execution of the superior instructions of the Government, declared that they reserved all further action in the event of the Italian claims. It is a well-known fact that the Government of Venezuela persistently refused to accept the German and Italian proposals.

The documents presented by the counsel of Venezuela demonstrate that President Castro affirmed, as an axiom of public law, that the diplomatic action constitutes an attack on the domestic legislation of the country. In relation to such maxims he also affirms that the territorial sovereignty would suffer limitations and in any way should be subordinated to the influence of foreign interests, or be influenced by the force of desires foreign to itself.

5. It is absurd to make the allegation that Great Britain made war upon Venezuela without asking for mediation or arbitration, considering that on a previous important occasion in which the Republic of Venezuela was concerned (see the Boundary award 3d October, 1899, between British Guiana and Venezuela) Great Britain in fact had recourse to arbitration.

6. It is a matter of surprise to read at page 22 that "a weak South American Republic should not have been invited to take part in a conference of such world-wide import," viz, in the peace conference. By the terms of the convention itself all the independent powers, not signatory of the protocol of The Hague of the 22d July, 1899, for the pacific settlement of international disputes, have the right to adhere. This protocol was communicated to all the governments according to the enactments of article 59.

The Government of Venezuela did not accept the international arbitration and the competence of arbitral permanent court. Mr.

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<sup>a</sup> See Vol. I, *Trattati e convenzioni del Regno d' Italia*.

MacVeagh excused them for their not suggesting arbitration, on the ground that in such circumstances "a weak American Republic is always alarmed and suspicious, supposing that the great powers of Europe are making war for the conquest and colonization of these weak American Republics." The said counsel refuted immediately this audacious affirmation by the words:

That before entering upon this course of conduct both Great Britain and Germany had taken the very prudent precaution of notifying the only American nation able to resist unjust aggression on their part, the United States, that they intended to respect the well-known policy of that Government with reference to the permanent occupation of any portion of American territory by any European power.

Mr. MacVeagh is the advocate of the political doctrine enunciated by the memorable message of President Monroe of December, 1823. But then it seems that he has some preference for expressions of violence discordant with the object of the tribunal of peace.

The President of the United States, the Hon. Theodore Roosevelt, declared in his message to Congress of December, 1901:

We do not guarantee any state against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power.

And again, in his message of December 2, 1902:

No independent nation in America need have the slightest fear of aggression from the United States. It behooves each one to maintain order within its own borders and discharge its just obligations to foreigners.

7. The action of allied powers in accordance with international law was employed to compel Venezuela to the performance of positive duties. The Government of this Republic since 1896 have made several contracts for the introduction of immigrants for the purpose of establishing colonies on the public lands,<sup>a</sup> and since 1861, in article 4, of the treaty of amity and navigation, had assured the most constant protection and safety for their persons and properties (*godranno sul territorio la più costante protezione e sicurezze nelle loro persone, nelle loro proprietà*).

Venezuela during a long period of history, as Mr. MacVeagh says, "was the scene of revolutions and factional contests under the leadership of chieftains ambitious for the control of the country."

The people of Venezuela were assured security even in time of external war. The international law does not permit to those empowered with military force to resort to robberies, seizure, injuries against the very persons whom it is their duty to defend. A state is liable for these transgressions, and it is undeniable that the Government of President Castro absolutely refused the right of the Italian Govern-

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<sup>a</sup> The Statesman's Year-Book, 1903, p. 1293.

ment to assure their citizens against the losses and damages caused to their persons or property during the civil wars.

8. The allied powers have not preferred war. Only after the proposal of arbitration the Governments broke their diplomatic relations; and the Government of Venezuela persisted in their obduracy.

Though the notification of ultimatums is not obligatory under the protocol signed at The Hague on the laws governing states in the relation of war before the commencement of hostilities, in fact this ultimatum was duly notified.

9. It is not relevant to enumerate the different governments of Latin America who are favorable to the arbitral procedure for the sake of equity and justice, as, while the other governments have advanced the high standards of international justice, only Venezuela remained till now segregated as if it were suspicious of the principles of justice and right, and only the action of allied powers has been able to produce the great effect to decide that country, as a part of the human family, to accept such principles.

Lord Pauncefote, representing Great Britain at the conference of The Hague, declared that the establishment of a permanent tribunal of arbitration was a duty for the nations.

### III.

10. Mr. MacVeigh charges Italy, Germany, and Great Britain with the fault of having demanded at the cannon's mouth the immediate payment of amounts of money (see p. 46); but he did not demonstrate that this demand was unjust. In considering that the commissions constituted to settle the claims arisen out of the civil wars, and presented by a great number of nations, have reduced the number and amounts of claims, the said counsel has given proof that the refusal of Venezuela to accept such commissions was injurious to the rights of the blockading states, and that the international law admits the action for the payment of the damages.

The pamphlet contains at page 47 a brief summary of those arbitral commissions.

11. The Italian counsel wish to point out that Mr. MacVeagh seems to forget that the Italian Government, animated by a generous enthusiasm for justice and peace, but at the same time in compliance with the duty of protecting their emigrants in foreign countries, at different times obtained the following agreements:

First. On the 19th November, 1876, an agreement with Brazil for the payment of indemnities due to Italian citizens who had suffered damages during the civil war. Brazil paid a total amount of 4,000 contos de reis.\*

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\* See Vol. XIV, Trattati e Convenzioni del Regno d' Italia, p. 370.

Second. An agreement of August 18, 1894, with the Republic of Colombia, to submit to President Cleveland the settlement of the claims of Signor Cerruti, for losses and damages to his property in the State of Cauca during the political troubles of 1885.\*

12. When the disputes can not be amicably settled by reference to arbitration, it is evident that the acts of war are reasonable. The peace conference has codified the rights and uses of war.

When international justice shall be entirely established war shall become a permitted mode of giving effects to decisions of tribunal. For this reason the counsel of Venezuela can not object to cannon mouth.

13. The counsel of Italy protests against the words written in page 117 that the sum of 2,810,555.95 bolivars has been declared irreducible. Mr. MacVeagh seems to forget that the demands of the Italian Government are comprehensive of two categories: The claims consisting in 2,810,555.95 bolivars, and the claims not yet verified.

The claims named of the first rank were admitted by the royal legation after being conclusively proved in accordance with the instructions of the superior Government and having been recognized for the damages occasioned by the civil wars during the period from 1898 to 1900.

The Venezuelan Government did not deny the existence and amount of the damages, because the Italian minister, to facilitate the examination on the part of Venezuela, transmitted to her on the 19th April, 1902, the copies of 123 records with the documents. This fact results from the diplomatic note of the Italian minister at Caracas, Mr. G. P. Riva, quoted on page 78 of the appendix produced by the counsel for Venezuela. It is evident that the affirmations of the said counsel have not been proved, and that the documents which he has annexed to his case constantly prove the contrary.

The other claims were not examined in view of the fact that the Venezuelan Government manifested the illegal intention to submit the verification of them to the junta calificadora created by the decree of January 24, 1901.

#### IV.

14. The counsel of Venezuela has affirmed at page 115 that the claims presented by the other powers have precisely the same character of the Italian claims, but the statement of facts exposed by the counsel of the other creditor powers do not contain the demonstration of the character of their claims. As for the counsel of Belgium, he has declared at page 5 that the Belgian debts are three in number:

The first referred to the post-office department of Belgium, amount-

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\* See Vol. XV, *Trattati e Convenzioni del Regno d' Italia*, p. 9.



ing to 8,249 francs. The second that of Mr. Pasquet, amounting to 320,000 francs.

The third, of the Caracas General Water Supply Company, fixed at 10,365,199 francs.

He further declares that the claim of the Caracas General Water Supply Company was settled in 1895 in bonds of a special internal debt, called "debt of the Caracas waters," which had to be successfully redeemed, and thus constituted rently payments.

It appears therefrom that the character of the Belgian debts is not the same as the damages caused by the civil wars, and the Italian counsel reserves the demonstration that these sums can not be included in the 30 per cent of the custom-houses of La Guaira and Puerto Cabello.

The mixed commission now is competent to examine the remaining Italian claims, under Article IV of the protocol signed at Washington on the 13th February.

## V.

It is time to examine the second objection presented by the counsel of Venezuela and North America and to proceed to a brief examination of the opinions expressed in the several cases of the other parties on this subject.

The counsel of Belgium has used these words: "The privilege can only proceed from the use of force; \* \* \* force is not a source of right; \* \* \* a pledge can not result from the use of force."

The counsel of the French Republic declared from the beginning that they have no intention at all to explain the relations which have existed between Italy, Germany, and Great Britain on one hand and the United States of Venezuela on the other hand, which led the first three of the aforesaid powers to the use of means of coercion.

On page 12 he adds:

It is not all our intention to distinguish whether this use [of force] has been justified or not, and it is needless for us to say that we will not follow Venezuela on the political ground she has entered. The various circumstances under which the conflict between the three allied powers and Venezuela arose, as well as the different means which were resorted to, are absolutely outside this contest. \* \* \* By violence, indeed, an advantage may result to its promoter against the innocent or guilty victim, be that the advantage a payment, a union of territory, or any other profit, etc.

We do not entertain the illusion that the use of force can be banished from international relations, no more than the domestic of various states. Even standing on juridical ground it is obvious that there are cases where this use of force is absolutely the respect of law. We do not intend to disregard the necessity of this extreme remedy.

15. The Spanish case declares that the maternal affection toward a daughter nation persuaded Spain that friendship was better adapted

than an act of violence to obtain the recognition of ratification of her rights (see p. 3). But the expressions are wrong because they call violence what is really a legitimate act of war.

Netherlands, Sweden, and Norway did not deal with this matter.

The counsel of Venezuela, who are at the same time counsel of the United States, have presented a supplement to the preliminary examination submitted to the tribunal on behalf of Venezuela, and have declared on the 3d October that the Government of the United States accepted the arguments of Mr. MacVeagh. In this supplement Mr. William Penfield, at page 6, says that the Italian Government by the smallest effort tried to secure a privileged situation; a thing which all the other powers could have done if they had wished. This amounts to an admission of the legitimacy of the blockade. Moderation in using the means of war is a virtue.

This "war to the war" is a feeble and an unacceptable expedient evolved by the defense.

The whole art of the counsel is founded and inspired by a confusion of words and deductions. In reality the right of war is a prerogative of every independent state and is now unjustly qualified "brute force and violence."

Violence, the abuse of force, which is employed against common right, against the laws, and against public liberty, constitutes a great part of the theory of criminal laws. War is an armed contest between nations. A civil war is one confined to a single nation. The right of making war belongs in every civilized nation to the supreme power of the state. The blockade is an act of sovereignty. The exercise of this right is under rules prescribed by the law of nations. The late military action against China in consequence of the "Boxers" uprising is an instance that the Governments which have now appeared before this tribunal find it right to have recourse to arms. The purpose of their action was then to enforce the payments of claims.

The Italian case, at page 3, demonstrated the real character of the military action taken by the allied powers.

This eccentric expedient was a tardy one also inasmuch as the other powers had maintained an attitude of neutrality. The case of His Britannic Majesty's Government, at Section III, Attitude of the other Creditor, says:

They had objected to this action either to protest against it as soon as it came to their knowledge or to offer to take part in it themselves and so to secure their share in the results.

But no one of the powers asked to participate in the belligerent operations, nor protested. Mr. Hay, informed of the intention of the allied powers, did not object to it.

The French ambassador pointed out that the French claims were secured as part of a diplomatic debt by the "13 per cent of 40

unities," and protested against any action which would injure that security, but made no protest on other grounds. On December 14 the Belgian minister made a similar reservation. The French Government intimated that the Governments of the United States, Spain, and Belgium had decided to demand from Venezuela "the most favored nation treatment" for the settlement of all their claims, and that they themselves intended to claim a method of settlement and payment equally favorable to that obtained by any other power. The clause of the "most favored nation" which is generally inserted in all treaties of commerce and navigation, as well as in several consular conventions, could not be practically embodied in a treaty of peace.

The fact of their suggesting such a clause implied that the neutral powers expressly acknowledged the legitimacy of the military action performed, and wanted to reap the benefit from such action without in the least exposing themselves or incurring any risk consequent upon war operations. It is demonstrated that the giving of the security now in question does not affect the "13 per cent of the 40 unities," to which alone those reservations related.

The documents presented to the tribunal prove that the Venezuelan State bowed to superior force and accepted the principle of liability. The counsel for Italy, in the Italian case, has inserted the declaration of President Castro: "I recognize in principle the claims which the allied powers have presented to Venezuela. \* \* \* To-day the Government bows to superior force." \* \* \* The President expressed the desire to arrange all the claims of the other creditors.

Mr. Bowen, plenipotentiary of Venezuela, with full powers, later on declared that Venezuela was prepared to meet all its international liabilities, saying: "If I recognize that brute force alone can be respected in the collection of claims, I should encourage the said other nations to use force also." Consequently, it results that the allied powers obtained a recognition of their rights by enforcing them, and that Venezuela extended this recognition to all the other creditor powers for fear of an identical treatment.

If it were true that by making war a state could not obtain the recognition of its rights, the neutral powers should not have accepted the action of Mr. Bowen at Washington for the settlement of all the claims.

But the counsel of the powers, allied for the purpose of expounding the impossible arguments set forth in their respective cases, must necessarily and reasonably acknowledge the respect due the treaties made in order to maintain peace and secure justice.\*

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\* L'obligation de respecter les traités repose sur la conscience et sur le sentiment de la justice. Le respect des traités est une des bases nécessaires de l'organisation politique et international du monde. Bluntschli, art. 410, Droit international codifié.

It is not possible to refuse to observe a treaty which has caused the cessation of war.

The counsels of the neutral powers have not examined with attention the treaty of peace of 13th February. Venezuela declares therein that she recognized in principle the justice of the claims (Art. I). Article IX stipulates: "At once upon the signing of the protocol arrangements shall be made by His Majesty's Government, in concert with the Governments of Germany and Great Britain, to raise the blockade of the Venezuelan ports." Article X confirms the treaty of amity, commerce, and navigation of 1861, and reestablishes regular diplomatic relations.

## VI.

16. Mr MacVeagh, on behalf of Venezuela, and Mr. William Penfield, on behalf of the United States, objected to the preferential or separate treatment, affirming that "Italy, Germany, and Great Britain distinctly agreed to the proposal of Venezuela that all remaining claims should be treated upon the basis of exact equity." Mr. MacVeagh affirmed further (see p. 115) "that the proffer made by Venezuela and accepted by the allied powers was expressed in clear and unequivocal words," and in proof thereof annexed a document signed by Mr. Herbert W. Bowen without mentioning the date, the person to whom it was addressed, and the page in which the said document could be found.

The Italian counsel has examined the appendix with great attention.

Mr. Bowen in his capacity as agent of Venezuela, on January 23, at Washington, said that all claims against Venezuela would be paid to the blockading powers out of the customs receipts of the two ports of La Guaira and Puerto Cabello, the percentage to be 30 per cent each month out of the receipts. In case of failure on the part of Venezuela to pay the said 30 per cent, the creditor nations would be authorized to put, without the consent and without any opposition on the part of Venezuela, Belgian custom officials in charge of the said two custom-houses and to administer them until the entire foreign debt would be paid. Mr. MacVeagh calls the letter where the above things are contained a statement left in the hand of Sir Michael Herbert, British ambassador.

Mr. Bowen, in another letter, of January 24, wrote as follows:

I hereby consent and agree to give the Italian claims the same guaranty that I have given for the British and German claims.

Three days after the same plenipotentiary signed the document

quoted by Mr. MacVeagh. He later on wrote to Sir Michael Herbert as follows:

I can not consent to give preferential treatment to the allied powers. If the matter were referred to The Hague all the creditory nations would be put on the same line.

The text of the document signed by Mr. Bowen was telegraphed to the Marquis of Lansdowne. (See Correspondence respecting the affairs of Venezuela, presented to both Houses of the British Parliament, p. 220; and Appendix, p. 167.)

Three days later Mr. Bowen exposed the objections out of which he withdrew his consent to paying first the claims of the allies. This document has been reproduced in the French case, and is to be read in the appendix, page 168.\*

Sir Michael Herbert insisted, on February 2, on a new proposition, viz, that two-thirds of the 30 per cent of the customs receipts of La Guaira and Puerto Cabello should be given to the allied powers, and that the remaining third should be paid to the peace powers.

Mr. Bowen declined this proposition, writing:

I can not accept even in principle that preferential treatment can be rightly obtained by blockades and bombardments. It would be absolutely offensive of modern civilization to recognize that principle and to incorporate it into the law of nations.

And he proposed to submit that question to the tribunal of The Hague:

I hereby propose that we leave that question to The Hague.

Mr. Bowen made a formal request that the blockade of the Venezuelan ports should be raised before the commencement of negotiations in Washington. Sir Michael H. Herbert immediately telegraphed to his Government the said request; but set forth the conditions which were to be accepted by Venezuela.

On the same day Mr. Bowen in answer to the letter stating the conditions on which Great Britain would raise the blockade of the Venezuelan ports informed the British ambassador that he accepted those conditions, as they are substantially the same as those already accepted by the Venezuelan Government. He requested that the British Gov-

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\* It is very important to remark that Mr. MacVeagh did not quote in his examination the document in its integrity, and that he has omitted the following passage: "At the end of each month the amount of the total income of the two said ports will be duly announced to the creditor nations and 30 per cent of that amount will be paid to them, even if the whole amount should be lost or stolen, for Venezuela in that case would be bound to pay the said 30 per cent even if she has to take it from other custom-houses or borrow the said 30 per cent. It is further understood that the said 30 per cent is to be considered absolute and unchangeable, and not to be diminished by any other agreements ever made or ever to be made affecting the customs receipts of the said two ports."

ernment should give orders at once to raise the blockade. But the German Government required an adequate guaranty distinctly specified; and as Mr. Bowen had suggested a guaranty based on the customs revenues, they thought it necessary to state exactly in which way the payment would take place out of these revenues. A guaranty, said the German Government, which has to be given *de facto*, and without any delay.

On the 24th January the ambassador of His Majesty the King of Italy, with reference to the conversation he had had with Mr. Bowen, stated that Italy would have raised the blockade at the same time as Germany and Great Britain if a document would have been signed by Mr. Bowen in virtue of his full powers, in which the said plenipotentiary would give to Italy the same guaranty already given to Germany and Great Britain.

In accordance with this proposition the Article V of the protocol of the 13th of February states:

Any question as to the distribution of the customs revenues to be assigned and to the rights of Great Britain, Germany, and Italy to the separate settlement of their claims shall be determined in default of arrangement by the tribunal at The Hague, to which any other power interested may appeal.

It evidently results from the affirmation of counsel for Venezuela and the United States of America that the allied powers had accepted in clear and unequivocal words that all claims should be treated upon a basis of exact equality, is contradicted by the documents which have been produced by them. If the powers had accepted the payment as Mr. Bowen proposed, a difference between the contending parties would not exist now; and, on this subject, it is to be remarked that the other creditor powers did not think it possible to follow Venezuela and the United States of America on that ground.

17. This objection is adopted by all the creditor powers in their cases, and each of them is, through this, at variance with the fundamental principles of international law. The counsel of France says at page 11:

According to the law of nations every sovereign state is equal to each other, whatever be the difference of fact which separates them. This theoretical equity is often disregarded, in fact, but it is necessary not to forget that, very fortunately, we stand in this case on the juridical ground.

#### The counsel of the United States of America:

All states are equal having equal rights and duties of respect, of representation, and of justice. \* \* \* The pretention of such exclusive rights assails the sovereignty of debtor state. It also assails that of other states having claims equally just, and if insisted on it would necessarily provoke resentments and lead to inevitable conflicts. Special favors of one state to another are exceptions introduced by treaty, not by public law. Hence treaties of commerce and navigation and other conventions granting special privileges by one state to another. But there can be found no treaty or convention, which, in the



same breath, grants justice to the nationals of the contracting and denies it to the national of other states.

### The consul of Spain :

The first of these maxims of the law of nations is the existence of a complete and natural equality among the states which constitute the international society of civilized peoples : the second, that the rights of a third party can neither be altered nor curtailed by acts or agreements in which it has had no part \* \* \* Can acts of war such as the events of December to February last, alter this natural, complete, and unchangeable equality, which is one of the keystones of the whole fabric of international law?

It is easy to demonstrate the defects of these contentions. A community possessing the marks of an independent state is a person in international law. In virtue of its independence it has complete liberty of action subject to international law in its relations with the other states and has rights and duties. The rights premordiales are inalienable. The right of conservation makes it necessary to keep troops or ships of war in time of peace.

The constitutions and the laws give the power to establish rules and regulations for the government of the army and navy.

The sovereignty and independence empower a state to conclude treaties. The constitutions establish the general principles as to operation of treaties on neutral states.

All the counsel of the neutral powers, by invoking the principle of equality, attempt to deny the principle of independence itself, because the fundamental right of sovereign states involves the right to enter into treaties, to make war, and conclude peace.

The treaties based on the constitutional principles form the rules of conduct between the States and declare their rights and duties. The ambassadors and their immunities are established for the development of the principles of international law and for the protection of the citizens or subjects in foreign countries.<sup>a</sup>

The consuls appointed by governments are generally invested with special privileges for the exercise of the duty to protect commerce, navigation, and their citizens.

The States are liable for the violation of the general principles of international law and for the violation of their obligations expressly stipulated.

The priority, differences, advantages, or rights established by a treaty do not interfere with the principle of equality. There is a

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<sup>a</sup> Professor Martens in his celebrated Treaty writes: *Le droit se manifeste dans la conclusion des traités. L'Etat a le devoir de défendre ses sujets et leurs intérêts légitimes contre les empiètements des Gouvernements étrangers. Dans ce but tous les Etats entretiennent des agents diplomatiques et consulaires dont le principal devoir est de protéger les droits et les intérêts de leurs nationaux.*

great variety in the matters of conventions, agreements, and pactions, but the right of making war always introduces an important difference between belligerent and neutral powers.

## XI.

### PRECEDENT OF CHINESE WAR.

1. Mr. MacVeagh further objects to preferential treatment, because the only precedent, so far as he has been able to discover, applicable to the present controversy, is that presented in the case of China, which he considers to be similar to the present controversy. The most powerful nations of the earth joined in extorting from China payment of claims of injuries suffered by them and their respective subjects and citizens. The representatives of the powers, after examination of the claims preferred by persons under their protection, made an approximate estimate of the amount and demanded the sum total without either details or explanation to the Chinese Government. He says:

Two of those powers, Belgium and Spain, had no naval or military forces in China or Chinese waters. Their diplomatic representatives were allowed to assert claims upon precisely the same basis and to receive payment upon an exact equality with the nations which did furnish the naval and military forces required to extort from China the settlement already mentioned.

2. The counsel for France has also accepted the expedition made against China as the precedent, which may be alleged by the blockading powers.

He writes:

We confess we have found only one (precedent), but this one has the very valuable advantage of being common to many States, among whom are precisely the States now engaged in this contest.

When that expedition, which proved to be very expensive and which required various sacrifices, had induced the Chinese Government to make compensation it became necessary to determine the sum to be required from China either for expenses incurred or for indemnities arising out of breach of contracts and outrages on foreigners, etc. How was the matter settled?

He then establishes that the powers have settled those claims on a footing of complete equality.

3. The counsel for Spain loyally admits that the military action of various powers—Spain, Germany, Austria-Hungary, the United States of America, Great Britain, Italy, Japan, the Netherlands, and Russia—had the aim to protect the lives of their representatives or subjects as well to reestablish order in the perturbed districts. Neither Spain, Belgium, nor Sweden and Norway took part in the military operations. The counsel for Spain adds that the doyen of

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\*The numbers of the following paragraphs are in continuance to those of the case.

the diplomatic corps at Peking was His Catholic Majesty's minister. Soon after the relief of the legations in the Chinese capital, the flight of the Imperial court, and the defeat of the Boxers and regular troops which had so long besieged the foreign residents in the diplomatic quarter, the representatives of the powers accredited in Peking, having received instructions to that effect from their respective Governments, held some fifteen sittings or conferences for the purpose of fixing and drawing up irrevocable conditions, the acceptance of which by China was to put an end to the situation created by the rebellion. As a result of these meetings, a collective note, signed on December 22, 1900, by the representatives of Spain, Germany, Austria-Hungary, Belgium, the United States of America, France, Great Britain, Italy, Japan, the Netherlands, and Russia, was presented on the 24th of the same month to the Chinese plenipotentiary, Prince Ching, and Li Hung Chang, viceroy of the province of Pechili.

The counsel for Spain says that the first paragraph of said note reads as follows:

Equitable compensation to the State companies, private individual, and Chinese who have suffered in their persons or property during the course of the late events on account of their being in the service of foreigners.\*

The learned counsel for Spain adds that in the minutes of the fifteen sittings held by the diplomatic corps in Peking it does not appear that the representatives of Italy, Germany, and Great Britain, or of any other powers, have suggested preferential or separate treatment.

He establishes that the signatories of the collective note accepted the principles of equality, and adds that the minister of Spain presented the note also in the name of Sweden and Norway, and the representative of Great Britain in the name of Portugal.

4. It would be a great loss of time to record the organization of the Middle Kingdom, the agreements by which the Chinese Government gave in possession of Germany, Russia, Great Britain, and France their adjacent ports and territories, the settlements and the rights of capitulations, the management of the Imperial customs department, etc.

5. The diplomatic correspondence respecting the affairs of China and the text of the treaty of September 7, 1901, contain facts and provisions which contradict the affirmations of the counter parties.

During the months of May, June, July, and August of the year 1901 serious disorders broke out in the northern provinces of China and crimes unprecedented in human history, crimes against the law of nations, were committed. On 20th June the Baron von Ketteler, German minister, proceeding to the tsungli yamen in the exercise of his official duties, was killed. On the same day the foreign legations were attacked and besieged by regular troops, who joined the Boxers.

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\* This note has not been produced.

The attacks were made upon orders emanating from the Imperial palace. At the same time the Chinese Government officially declared, through its representatives abroad, that they guaranteed the safety of the legations. A member of the Japanese legation, in the discharge of an official mission, was killed by regulars at the gates of the city. In several provinces and at Peking foreigners were murdered, tortured, or attacked by Boxers and regular troops; their establishments were pillaged and destroyed; foreign cemeteries, notably at Peking, were desecrated. These events led the foreign powers to send their troops to China in order to protect the lives of their representatives and of their nationals and to restore order.

During their march to Peking the allied forces met with the resistance of the Chinese armies and had to overcome it by force. China recognized her responsibility in the disturbances referred to, and the powers decided to accede to her request on the irrevocable conditions enumerated in the final protocol between the foreign powers and China, signed between the foreign powers and China for the resumption of friendly relations September 7, 1901.\*

Belgium and Spain had their plenipotentiaries in this treaty. The Chinese Government stated that they would erect on the spot of the assassination of Baron von Ketteler a commemorative monument (Art. 1).

The Emperor of China appointed the vice-president of the board of finances as envoy extraordinary and specially directed him to convey to the Emperor of Japan the expressions of his regrets at the assassination of Mr. Sugijama (Art. 3).

The Chinese Government was obliged to erect an expiatory monument in each of the foreign or international cemeteries which were desecrated, and in which the tombs were destroyed (Art. 5), and to prohibit the importation into its territory of arms and ammunition as well as of materials exclusively used for the manufacture of arms and ammunitions (Art. 5).

By an Imperial edict dated the 29th May, 1901, the Emperor of China agreed to pay the powers an indemnity of 450,000,000 of haikwan taels.

This sum represented the total amount of the indemnities for states, companies or societies, private individuals, and Chinese referred to in article 6 of the note of December 22, 1900, and was to bear interest at 4 per cent per annum and the capital to be reimbursed by China in thirty-nine years in the manner indicated in the plan of amortization annexed to the treaty (Art. 6).

The service of the debt was to take place in Shanghai in the following manner: Each power to be represented by a delegate on a commission of bankers authorized to receive the amount of interest and

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\* See the Italian Collection of Treaties, Vol. XVI.

amortization. The doyen of the diplomatic corps at Peking had to convert it into fractional bonds bearing the signature of the delegates of the Chinese Government. The revenues of the Imperial maritime customs were assigned as security of bonds in the manner indicated in the said article 6.

The Chinese Government was obliged to consent that the quarter occupied by the legations should be considered as one specially reserved for their use and placed under their exclusive control, in which Chinese should not have the right to reside, and which might be made defensible (art. 7); to concede the right to the powers in the protocols annexed to occupy certain points for the maintenance of open communication between the capital and the sea. The points occupied are indicated in article 9. The Chinese Government was obliged to publish during two years in all districts and cities the edicts prohibiting forever, under pain of death, membership in any anti-foreign society, the edicts enumerating the punishments inflicted on the guilty, and the other several edicts indicated in article 10; to consent to negotiate the amendments deemed necessary by the foreign governments to the treaties of commerce and navigation and the other subjects concerning commercial relations, with the object of facilitating them (art. 10).

The Imperial Government agreed to reform the offices of foreign affairs (Tsung-li-Yamen) on the lines indicated by the powers (art. 12), and also to modify the court ceremonial as regards the reception of foreign representatives.

6. In the collective diplomatic action against China, the representatives of Belgium, Holland, Spain, and United States did take part. The notes of the plenipotentiaries were collective; negotiations proceeded in collective name. The foreign representatives frequently met and specially discussed the edicts respecting the punishment of the ringleaders of insurgents. A commission consisting of the first secretaries of the various legations was appointed to consider which would be the best limits for the contemplated legation quarters.

The representatives of Belgium, Holland, Spain, and United States signed the note embodying the demands presented to the Chinese of December, 1900.\*

It was natural that all powers should be parties in the treaty.

These notifications and the treaty prove:

(1) That the intervention and military action obliged the Chinese Government to accept responsibility.

(2) That the treaty was signed during the occupation of territory.

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\* See China, n. 6 (1901), Further correspondence respecting the disturbances in China, presented to both Houses of English Parliament--August, 1901, pp. 60-61.

(3) That payment of indemnities was obtained for the total amount of the claims, with the real security upon the customs revenues and a guaranty of Chinese territory.

(4) That the said powers did not stipulate an arbitration nor the appointment of mixed commissions.

As far as the missions and individual native Christians are concerned, the contracting parties in a meeting decided to include their demands in the total amount of indemnities presented to the Chinese Government. It is well known that the Christian powers protect the Christian populations in their relations with peoples belonging to other religions.

The counsel for the United States, Spain, and France forget to say that on May 29, 1901, China agreed to pay to the powers an indemnity amounting to 450,000,000 taels (£64,000,000) for injuries inflicted by the Boxers. This indemnity was to constitute a gold debt repayable in twenty-nine annual installments, due on January 1 of each year up to 1941. Interest at 4 per cent, amounting to 18,829,500 taels (£2,500,000) per annum half yearly. The securities for the debt are the imperial maritime customs otherwise unappropriated, increased to 5 per cent ad valorem (to be converted into specific duties), the natives customs (transit liken within 16 miles of posts), administered by the maritime customs, and the salt gabelle. The proceeds of the assigned revenues are now paid monthly to a commission in Shanghai.\*

## XII.

### PROOFS OF THE INVALIDITY OF THE PROTOCOLS STIPULATED BY THE CREDITOR POWERS.

1. The counsel for Italy, in chapter 1 of the case entitled "Reservations," writes:

It is necessary to know the details of the securities; and the Italian Government reserves to itself discussion on argument as well as on the existence and validity of the protocols of the other creditor powers.

He writes in the Chapter IX entitled "Right of priority founded on other reasons."

Mr. Bowen received the permission of his Government to arrange the claims of the other nations. It is necessary that proof should be given of this, as it seems that in the agreement with the Secretary of State of the United States of America this permission is wanting. It is also necessary to remember that Mr. Bowen was the diplomatic representative of the United States at Caracas, and that he is an American citizen.

The same counsel has reserved in his conclusion (p. 18) to examine and weigh the reasons above stated when the diplomatic correspond-

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\* See China, in the Statesman's Yearbook, 1903, p. 510.



ence and protocols with the other parties should have been produced before the tribunal.

2. He has now examined the produced documents, and he feels it to be his duty to express his opinion in connection with the whole question both *de jure* and *de facto*.

The independent States have the active and passive right of legation. Those States which have the right to send have the right to receive embassies. This prerogative, as a general proposition, is regulated by the constitution and by the laws of each nation.

Diplomatic agents are appointed by their Governments, and as a rule represent solely their own country; but in exceptional cases they are permitted to interpose their services on behalf of another State, viz, that he is authorized so to act by his Government and that he is willing to lend his services allowed to such States in the stipulations of treaties.\*

3. As a matter of fact Mr. Bowen had capacity as plenipotentiary of the Republic of Venezuela for signing the protocols now produced before the tribunal; but it does not appear that that gentleman was ever authorized by his Government to negotiate and sign the American protocol. (See Appendix, p. 181.)

4. It seems necessary to remark that the said protocol, as printed in appendix, is undated, although Mr. MacVeagh has had the precaution of quoting the dates of the protocols of Italy, Germany, and Great Britain. In a note appended to the same protocol it is stated: "The protocol with the other powers were same *mutatis mutandis* as the United States protocol." At page of appendix 202 he has given the list of protocols for the settlement of claims against Venezuela.

5. The counsel for France have annexed to their case the protocol and have given the date of the 23d February, 1903. The other counsel have not produced their protocols, but the Belgian only gives the date of theirs.

France never accepted the protocol of 7th May in the clause respecting the language to be used before the tribunal. (See the documents communicated to the secretary-general of the court.)

6. Under the general law of nations a treaty does not operate of itself without the intervention of the sovereign power, according to the constitutional rules.

The undersigned counsel annexes to this counter case in appendix a list of the articles of constitutions in force in the States represented in the tribunal of arbitration, showing the respective conditions under which a treaty becomes operative in the different countries.

7. In the appendix annexed to his case Mr. MacVeagh has pub-

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\* During the war against Venezuela the Government at Washington was intrusted with the protection of Italian citizens.

lished the report of the high commission of foreign affairs of Venezuela charged with the consideration and report of the protocols, signed in Washington by the commissioner of Venezuela and the representatives of Italy, Germany, and Great Britain. In the said report it is stated that—

To attribute to those protocols the quality virtually foreseen by the constitution in No. 16 of article 54 is absolutely impossible, inasmuch as they are based on conditions which the executive power with great courage and patriotism, in keeping with the greater abundance of knowledge, as being contrary to the radical principles of our constitution.

The agent subscribed to those conditions under the compulsion of force in the very moments when the waters of the Republic were occupied by the squadrons of the alliance.

The agreements then obtained are the work of effect of circumstances which do not appear to have been anticipated in any part of our legislation.

Article 15 of the constitution of Venezuela forbids the Government to conclude with the other nations any treaty which impairs the principles established in its articles 13 and 14; and as none of the three protocols to those articles appear to be consulted, but, rather, manifestly omitted.

The conditions created by those protocols is not then, properly speaking, a lawful condition. Treating of a state of affairs truly abnormal, and itself abnormal, far from establishing any law, it excludes the application of all.

After the exposition of the other clauses of these protocols one reads also that—

The commission deems that, given the nature of the three protocols, it is not incumbent on the Congress to exercise in respect to them the faculty conferred by No. 16 of article 54 of the constitution; and if, as it seems just and necessary, it may be desired in some way to strengthen the action of the Executive in that which conduces to their inevitable fulfillment, the legislative body may limit his intervention to a faculty of concrete and exceptional character, to the end that from by abnormal circumstances which determine at this point such obligations, these may never be deduced the least precedent for the political life of the Republic. (Caracas, Mar. 28, 1903.)

8. The Congress of the United States of Venezuela after discussion in the session of the 28th March sanctioned this resolution:

Whereas the protocols drawn up in Washington the 13th of February last by the agent of Venezuela and the representatives of Germany, Great Britain, and Italy were concluded and signed in the midst of a situation of force created in the Republic in a manner as unforeseen as it was abnormal; and whereas such documents can not on that account be considered according to the form established for the diplomatic negotiations begun, followed up, and concluded in the regular way;

*Be it resolved*, To withhold from the aforesaid protocols the sanction of the constitutional procedure pertaining to diplomatic treaties and to limit its action in regard to them to authorizing the Federal Executive that put them in operation, without permitting that any of their clauses establish the least precedent in the political life of the Republic. Given in the Federal legislative palace, in Caracas, the 28th day of March, 1903, the ninety-second year of independence and forty-fifth of the Federation. (See Appendix, p. 91.)

This resolution of the National Congress, signed by the president of the Senate, J. A. Velutini, and the president of the House of Deputies, Ramon Ayala, was published in the Official Gazette (*Gaceta Oficial*, n. 8807, 30th March, 1903). The Congress ended its session immediately after, and consequently the other protocols were not, and could not, be submitted to the Congress.

The Italian counsel begs to remind the tribunal of the Roman laws:

*Jus Reipublicæ pacto mutari non potest.* (Ulpianus, L. 5, Dig. De administratione, etc.)

*Nullum pactum, nullam conventionem, nullum contractum inter eos videri volumus subsecutum, qui contralunt, lege contrahere prohibente.* (Lex 5, Cod. De Legibus.)

*Nihil actum esse credimus, dum aliquid addendum superest.* (C. Lex 11.)

9. The appendix furnishes the proof of President Castro's diplomatic action to escape from the penalty incurred for the injuries which the subjects of the claimant nation in territory of Republic had suffered during the revolutions and civil wars.

President Castro hoped first in the Monroe doctrine. The Argentine Government made to the Government of Washington the propositions set forth in the note dated December 29, 1902.

The President of the United States did not accept those propositions. The American foreign minister reminded the Argentine Republic of the opinions expressed in the message to the Congress, viz:

That by the Monroe doctrine we do not guarantee any State against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power. (See Appendix, p. 208.)

10. Later on President Castro gave the hope that bankers would consent to a loan to pay all the creditors, and to this aim the president of the Senate was sent to Paris. (See the declaration appendix to procès verbal of tribunal of 1st October.)

It is clear and irrefutable that all the protocols of the adversary peaceful powers are posterior in point of date to those of the allied powers.

11. At all events the counsel for Italy begs the learned counsels on the other side to declare in the minute of proceedings whether the dates appearing in Chapter VIII of his case and indicated by Mr. MacVeagh in the list in appendix are correct or not.

It is an absolute fact that, with the exception of the protocols by the allied powers, those of the others are invalid. Under article 54 of the constitution of the Republic of Venezuela, the President has the duty to present all protocols for the sanction of Congress, which are not treaties of peace.

## XIII.

**SPECIAL ARGUMENT IN THE QUESTION OF THE CARACAS WATER SUPPLY COMPANY.**

I. The counsel for Belgium after saying that the gauge (pledge) can not result from the use of force asserts:

1. That "it remains to decide concerning Belgium on the distribution to which this State is entitled." (See p. 5.)

2. That the protocol between the Belgian Government and Venezuela was signed on the 7th March, but he did not produce that protocol.

3. That the claim of the Caracas General Water Supply Company had been settled in 1895 in bonds of the special internal debts called "debts of Caracas water," which had to be successively redeemed and thus constituted rental payment. But from 1897 the Venezuelan Government has suspended the payment of these bonds, interest, and a new mode of payment has been decided between Belgium and Venezuela. The said counsel does not indicate the date and the mode of payment, and it is further incomprehensible how the Belgian Government could substitute itself to the company.

4. He adds "that the 31st of October, 1895, by agreement the Caracas General Water Supply Company has transferred its grant to the Venezuelan State, but that this agreement does not constitute any gauge (pledge) or advantage whatever in the company's favor, and that no ulterior convention has granted such."

5. He finally declares "that the Presidential decree dating from the 31st October, 1895, has destined by measure simply administrative certain revenues for the redemption of bonds of the Caracas waters, but that these revenues have not been constituted as pledges in the company's hands."

6. And that since nine months after the transfer a law of 18th June, 1866, assessed the customs revenues of Venezuela without taking any account of the destination intended in the 6th October, 1893, decree.

7. That "on the other hand a decree of 24th April, 1903, has leased for a ridiculous sum the water supply, thus proving that his supply did not constitute any pledge in the company's hands."

8. The said counsel concludes with the following words:

Whereas, if impossible, a doubt could exist on this subject, the Belgian Government declares, as much as is needful, that it will relinquish all appropriations contemplated by the Presidential decree of 31st October, 1895, appropriations, moreover, made without effect on which the Caracas General Water Supply Company has not right and of which, as it has been proved above, it can not and does not benefit.

9. According to every legislation and also according to data of good sense and arbitral procedure, every part which presents a demand has the duty of the proof, and must state the situation of fact.

The assertions of fact contained in the arguments presented by M. Woeste are not to be admitted.

It is true that the allied powers had not previously demanded preferential treatment, but that was because in the first instance there had been no suggestion that the other creditor powers had any right to interfere in the matter at all, and questions of preference only arise when there are competing claimants. But it is true, on the contrary, that from the very beginning the blockading powers had demanded security adequate to provide for the satisfaction of their claims.

In accordance with the rules of international law the allied powers stipulated a security in the treaty of 13th February, as the French and Belgian Governments had stipulated before other securities.

The Belgian Government being afraid that the British forces could take possession of the Venezuelan custom-houses, considered it desirable to inform the Britannic Government that the Belgian interests, as well as the French, were guaranteed by the Venezuelan customs. (See Blue Book, p. 173.)

The treaty stipulated by the allied powers respected the former Belgian conventions. In his case the counsel for Belgium has declared that Belgium will relinquish all appropriations contemplated by the presidential decree of 31st October. (See p. 6.)

It is not for Italy to accept such renunciation. The Belgian counsel has not powers for such renunciation, nor can the tribunal take notice of it. Each one must keep its securities.

#### XIV.

##### IMPOSSIBILITY OF APPLYING THE PROCEDURE OF THE FRENCH CODE ON THE EXECUTORY PROCESS.

1. The counsel for Italy has demonstrated in Chapter — of the case that Venezuela was not in a condition of bankruptcy. In the civil law the principle of the Roman law (*Bona debitoris obnoxia creditorum*) is adopted. But the case of a State adopting the system of private law is not to be found.

2. Grotius divided all kingdoms into patrimonial and usufructuary. He seems to think that the former can be alienated by their rulers without the sanction of the people; but the usufructuary can not without their consent.

In the old time a pledge was given for the security of the contracting parties. This pledge, or pawned thing, can be what is legally called a movable property. It was sometimes the retention of a place.

Poland once placed her crown jewels in the hands of Prussia. Or the pledge could consist of immovable property. "They may not be actually placed in the possession of the creditor State, but assigned over by some instrument without actual delivery, which hypothecates them." The State which holds the pledge is bound to preserve it in good condition, but may, if the stipulated time elapses without the payment of the debt or the fulfillment of the condition, appropriate it. The sort of guaranties which relate to hostages, pledges, and hypothecations are now unusual transactions between States.

3. In the modern practice a treaty may be made in the case of a loan in one State or in the case of payment of indemnity with, as a security, a portion of the public income.

The validity of this security is a right which is the result of particular conditions and circumstances of the exercise of the absolute rights of the independence and of the absolute right of negotiation and treaty.

4. In the civil law hypothecations are divided into general and special. When the debtor hypothecates to his creditor all state and property he actually has, or may have, the hypothecation is general; when the hypothecation is confined to a particular estate it is special.

The creditors are divided into personal and real.<sup>a</sup> The former are so-called, because their claims are mainly against the person, and can reach the property of their debtors by virtue of the general rule by which he who has become personally obligated is bound to fulfill engagements with all his property acquired and to be acquired, which is a common guaranty for all his creditors. The latter are called real because they have mortgages or other securities binding on the real states of their debtors. The creditor who has a security has the preference in case of insolvent estates. The civil law of civilized peoples divide the creditors into chirographers and hypothécaires. In the Roman law and in the codes of the Latin peoples real creditors have this last name, and their hypothèque is conventional by the express agreement of the debtor.<sup>b</sup>

5. The application of the principles above stated is not possible in international law. A private person, if he is in need, can sell his property and make debts with a conventional hypothèque.

The individual credit is strictly limited to the amount of his fortune. The State is in a very different situation, inasmuch as it is more frequently obliged to have recourse to the credit. Its patrimony is less defined, and generally speaking it consists of buildings,

<sup>a</sup> See in Bouvier's Law Dictionary, word creditor, p. 45.

<sup>b</sup> Ernest Lehr, dans les *Eléments de droit civil russe* (Russie, Pologne, provinces baltiques), § 358, expose les lois russes en matière de zaklad ou de nantissement. Ces lois ont sanctionné les principes du droit romain associés aux coutumes locales.



often of forests. But these are not such goods as can be easily alienated. It can also have mines and railways which can be sold or given as pledge.

It can also grant a privilege or monopoly on a given industry. But the easiest way is to increase taxation.

The yield of taxation is changeable, and can increase or diminish. When a Government takes the engagement of paying a special debt by a special income or by a portion thereof, it does not interfere with the right of other Governments created by treaties if said treaties are stipulated by public ministers in accordance with their powers and ratified in such case as are required by their constitutional laws.\*

The allied powers did not protest against the treaties stipulated by Venezuela to reestablish the diplomatic relations. It will be spoken of those treaties hereafter.

## XV.

### THE FRENCH GOVERNMENT OBTAINED A SECURITY OF ITS RIGHTS WITH THE TREATY OF NOVEMBER 26, 1885.

1. It is not necessary to refute the erroneous demonstration made the French counsel at page 10 to the effect that the allied powers are the plaintiffs before the Court of Arbitration. The decisions of the tribunal given on October 2 have repelled the pretention of that counsel for the order of procedure; and the other decisions concerning the order of the oral discussion has constituted the exception of *rei judicatæ*. Otherwise, it is certain that the plenipotentiary of Venezuela offered the revenues of the custom-houses to obtain that the blockade should be raised, and for the reestablishment of peace. (See the Italian case.)

2. The French counsel, in order to contest the acquired rights of the allied powers, writes, at page 13:

If the preferential treatment claimed by the blockading powers were to be recognized the benefit these powers would after all have afforded to the peace powers seems to be somewhat slight, seeing that latter have renounced the use of any act of coercion for the claims to which 30 per cent are assigned, and seeing that it is only in the far future that they would receive anything. If they had not been strongly confident in the strength of their case it is not to be supposed that they would have so easily consented to postpone for so long a time the payment of their claims.

3. The said counsel is forgetful of the statement of facts and of the rights previously acquired by his Government.

The diplomatic correspondence respecting the affairs of Venezuela, as above said, proves that the pacific powers required on December 18, 1902, the most favored nation treatment. (See Blue Book, D, No. 291.)

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\* Draft outlines of an international code. Dudley Field, art. 192.

Mr. Delcassé, French minister of foreign affairs, informed also the British Government that the method of settling the claims in respect of event prior to the 23d May was provided for by the treaty of 1885 and by the protocol of 1902, and in this regard requested that the French privileges should not be diminished. (See p. 79.)

In reply thereto the Marquis of Lansdowne stated that he would care that the French and Belgian interests should not be prejudiced.

4. Tribunal and counter parties are strongly requested to take in consideration the principal clauses of the mentioned treaty of 26th November, 1885.

By Articles I and II the Venezuelan Government obliged itself to pay the rest of the capital of the debt of 6,000,000 francs, stipulated in the convention of July 29, 1864. \*

The sum of 483,973.92 francs, which represented the total amount of the indemnities settled in the years 1867-68, and to which the further sum assigned by the mixed commission contemplated by article 3 would have been added, received a guaranty from the assignment to France of the 13 per cent of the 40 unities given by Venezuela for the payment of the diplomatic debt.

Article III intrusted a mixed commission with the settlement of posterior debts.

Article V is as follows:

In order to avoid all that might in future disturb their friendly relations, the high contracting parties agree that their diplomatic representatives will not intervene in the claims of private persons concerning matters which are ruled by civil or penal law of the country unless justice will have been denied or belated, contrary to the usages or laws, a definitive judgment will have been unexecuted, or, after exhaustion of every legal means, treaties or law of nations will have been violated.

This treaty proves that Venezuela is not in need to satisfy the French debts with the 30 per cent granted to the allied powers.

5. The English minister for foreign affairs and the other two allied powers have respected in their fresh agreements the acquired rights by which the French claims were included in the diplomatic debts and secured in the same way. In fact, they are not included by the treaty of peace signed 13th February, 1903, in the newly acquired security of the 30 per cent of the customs receipts in the two ports of La Guaira and Puerto Cabello.

6. Those are the real and true reasons, out of which the French Government have not thought it expedient to take part in the blockade. If France chooses to renounce to its treaty out of kindness for Venezuela and accept the guaranty of the 30 per cent instead of the former ones, after the allied powers have been completely satisfied,

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\* Ratifications were exchanged at Paris, on March 28, 1886.

the Italian Government will not object to it. *Res inter alios acta tertio neque prodest neque nocet.*

## XVI.

### THE RIGHT OF PRIORITY FOUNDED ON THE EXPENSES.

1. In the Italian case at the Chapter VIII, entitled "Right of priority founded on the expenses incurred," it is demonstrated that a later creditor is preferred to an earlier one, if the advance made by the former is made for the purpose of securing the safety of the subject to the earlier charge. The allied powers were not the last creditors, but the first who acquired the security.

The counsel for France says:

Considering the argument by analogy to be found in the principles of civil law, it is easy to see that this argument is of no application whatever in the present contest.

It is true, indeed, when a creditor improves or incurs expense to secure the common pledge that he is entitled to a privilege which appears quite equitable. But such a privilege is granted to him not for the claim or claims he may pretend against the common debtor, but only for such expenses as he has incurred in the common interest.

The counsel for France maintains that in this case the blockading powers have nothing of that sort to ask for, because the protocol of February 13, 1903, does not contain any provision concerning the war expenses.

If the treaty should have contained such a clause no controversy would now be possible, because an evident obligation excludes the possibility of inventing pretexts not to observe it.

2. The counsel for France declares that—

the allied powers obtained indemnities the double character of which is worthy of notice. At first the settlement was imposed upon Venezuela without discussion, without any procedure of arbitration, and this could not fail to be keenly felt by Venezuela; secondly, the settlement had to be made in cash or in drafts payable on short terms.

This was a second and not trifling advantage, if the debtor's financial situation is remembered, as also the balance of certain debts, even of the most unquestionable character; \* \* \* This payment amounted to £5,500 for Italy.

He deems this sum to be "a special and direct advantage obtained through the armed intervention."

The Italian counsel has already demonstrated that the sum of 2,810,255.95 bolivars was ascertained since many years. But that sum has not yet been paid. It must be included in the 30 per cent.

3. It is true that in all the protocols and cases and in the procedure the expression of "creditor powers" is always used; but it must not be forgotten that the real creditors are the subjects of those powers. If the States would take possession of the sums owed to their citizens, this should amount to an act of spoliation.

4. It is absurd to insist upon any analogy with the case of the general distribution of the debtor's assets, for two final reasons. Firstly, because Venezuela is not compelled to distribute its assets among all its creditors; but is only offering a portion of its revenue (La Guaira and Puerto Cabello), while the customs of the other ports remain absolutely free. Secondly, because the revenue of a State, as it has been widely demonstrated above, can not be submitted to the rules of civil law of the executory process. The States have exclusive powers to impose taxes upon all properties, movable or immovable, upon the properties of their domiciled residents, and of the corporations existing by virtue of their laws, upon the exercise of any vocation within their jurisdiction. Taxes can be imposed upon foreigners. Equality of taxes is secured by a number of treaties. Shipping is taxable. The modern governments have adopted the principle that the public debt is not confiscable.

## XVII.

### EXPENSES.

According to Article I of protocol of May 7, 1903, the tribunal has to decide another question: It has to decide how, when, and by whom the costs of this arbitration shall be paid.

The counsel for France affirms that the blockading powers "have raised the contest of a preferential treatment and rendered the procedure of arbitration necessary." (See p. 20.) This assertion of fact can not be admitted.

The counsel concludes:

It is but fair that said powers shall be charged with the costs, as happens to the succumbing party in every suit at law.

It is necessary to invite the attention of the tribunal to the fact that the counsel of France only has made this demand.

This matter is not to be regulated by the civil procedure. The arbitration is not a compulsory procedure and it takes place by mutual and free consent of the parties.

Venezuela was the first to propose the arbitration. In the oral discussion it will be demonstrated that Venezuela, France, Belgium, and the United States are the parties which, without any valuable reason, have contested the rights of the allied powers, and interfered with the special security acquired by them.

The tribunal has the power of sharing the expenses between the counter parties.

### CONCLUSION.

His Majesty's Government, adhering to the reasons stated in the case presented on October 18, request the tribunal to take in due con-

sideration all the arguments expounded in the Italian case and counter case, and to decide that the action of counter parties is not well founded.

Rome, October 30, 1903.

AUGUSTO PIERANTONI,

*Senator of the Italian Kingdom, Member and late President of the Institute of the International Law, Member of the "Contentieux Diplomatique" at the Italian Foreign Office, Advocate by the High Italian Court, Counsel.*

ALESSANDRO BOSDARI,

*His Majesty the King of Italy's First Secretary of Legation, Agent.*

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## APPENDIX.

### ARTICLES OF THE CONSTITUTIONS OF STATES WHICH ARE PARTIES IN THE PRESENT CASE CONCERNING THE VALIDITY OF TREATIES.

*Allemagne.*—Art 11. La présidence de la confédération appartient au Roi de Prusse, qui porte le titre d'empereur allemand. L'empereur allemand représente l'Empire dans les relations internationales, déclare la guerre et fait la paix au nom de l'Empire, conclut les alliances, traités et conventions avec les Etats étrangers, accrédite et reçoit les agents diplomatiques.

\* \* \* \* \*

Si les traités avec les étrangers se rapportent à des objets, qui d'après l'article 4 appartiennent au domaine de la législation de l'Empire, le consentement du conseil fédéral est nécessaire pour leur conclusion et l'approbation au reichstag pour leur validité.

*Belgique.*—Art. 68. Le Roi commande les forces de terre et de mer, déclare la guerre, fait les traités de paix, d'alliance et de commerce. Il en donne connaissance aux chambres aussitôt que l'intérêt et la sûreté de l'Etat le permettent en y joignant les communications convenables.

Les traités de commerce et ceux qui pourrait grever l'Etat ou lier individuellement des Belges, n'ont d'effet qu'après avoir reçu l'assentiment des chambres.

Nulle cession, nul échange, nulle adjonction de territoire ne peut avoir lieu qu'en vertu d'une loi. Dans aucun cas les articles secrets d'un traité ne peuvent être distinctif des articles patents.

*Danemark.*—Art. 18. Le Roi déclare et conclut la paix; il forme et rompt les traités de commerce; mais il ne peut céder aucune fraction de territoire, ni contracter aucun engagement qui change les conditions existantes du droit public sans le consentement préalable du rigsdag. (Loi fondamentale, 28 juillet 1866.)

*Espagne.*—Art. 55. Le Roi doit être spécialement autorisé par une loi : 1° pour aliéner, céder, ou échanger une fraction quelconque du territoire espagnol ; 2° pour annexer un territoire étranger au territoire espagnol ; 3° pour admettre des troupes étrangères dans le royaume ; 4° pour ratifier les traités d'alliance offensive, les traités spéciaux de commerce, dont, dans aucun cas, articles secrets d'un traité ne peuvent déroger aux articles publics ; 5° pour abdiquer en faveur de son héritier. (Constitution, 30 juin 1876.)

*Etats-Unis d'Amérique.*—XII. Pouvoirs et devoirs du Président.—Art. 1<sup>er</sup>. Il aura le pouvoir, par et avec l'avis et le consentement du sénat de faire des traités, pourvu que les deux tiers des sénateurs présents y concourent. (Constitution fédérale, 17 septembre 1787.)

*France.*—Art. 8. Le Président de la République négocie et ratifie les traités. Il en donne connaissance aux chambres aussitôt que l'intérêt et la sûreté de l'Etat le permettent. Les traités de paix, de commerce, les traités qui engagent les finances de l'Etat et qui sont relatifs à l'état des personnes et aux droits de propriété des Français à l'étranger, ne sont définitifs qu'après avoir été votés par les deux chambres. Nulle cession, nul échange, nulle adjonction ne peut avoir lieu qu'en vertu d'une loi. (Loi sur le rapport des pouvoirs publics, 16 juillet 1875.)

*Grande-Bretagne.*—Des prérogatives royales. Il n'y a pas le texte d'une loi unique indiquant les principes constitutionnels qui régissent le Royaume-Uni de la Grande-Bretagne. A l'exemple des auteurs qui ont étudié la matière on peut grouper les prérogatives royales dans un seul titre. Le souverain représente l'Etat dans son rapport avec les puissances étrangères, il déclare la guerre, conclut la paix, fait et défait les traités. Il doit porter à la connaissance du parlement les traités conclus avec les puissances étrangères, ainsi que les documents nécessaires pour leurs discussions.\*

\* Le Conseil italien s'est laissé guider d'après les publications officielles telles que : *The Statutes of the United Kingdom of Great Britain*, *The Cabinet's Lawyer* et *The Parliamentary Debates*. Il pourrait indiquer un grand nombre d'auteurs par lui consultés. Mais il est reconnaissant à l'honorable MacVeagh, qui, ayant versé dans les débats la correspondance respecting the affairs of Venezuela ; que le ministère anglais présenta au parlement, a donné la preuve du principe constitutionnel avant affirmé.

*Italie.*—Art. 5. Au Roi seul appartient le pouvoir exécutif ; il est le chef suprême de l'Etat, commande toutes les forces de terre et de mer, déclare la guerre, fait les traités de paix, d'alliance, de commerce et d'autres, en les portant à la connaissance des chambres tant que l'intérêt et la sécurité de l'Etat le permettent et en y joignant les communications opportunes. Les traités qui entraîneraient une charge pour les finances ou une modification du territoire de l'Etat n'auront pas d'effet s'ils n'aient obtenu l'approbation des chambres.



*Mexique.*—Art. 22 b. Le sénat a le pouvoir exclusif d'approuver les traités et conventions diplomatiques faits par les puissances étrangères. \* \* \* (Constitution de l'Union mexicaine, 4 février 1857–6 novembre 1874.)

*Pays-Bas.*—Art 57. Le Roi fait et ratifie les traités de paix et autres traités et conventions avec les puissances étrangères. Il les communique aux deux chambres des États généraux aussitôt qu'il croit que l'intérêt et la sécurité de l'Etat le permettent. Les traités qui contiennent soit la cession, soit l'échange d'une partie du territoire du royaume en Europe ou dans les autres parties du monde ou toute autre disposition ou modification concernant des droits légaux, ne sont ratifiés par le Roi qu'après que les États généraux ont approuvé cette disposition ou modification. (Loi fondamentale, 21 août 1815.)

*Suède.*—Art. 12. Le Roi a le droit de conclure des traités et des alliances avec les autres nations conformément à la loi. (Constitutions scandinaves, 6 juin 1866.)

*Norvège.*—Art. 75. \* \* \* Il appartient au Storting \* \* \* de se faire communiquer les alliances et traités que le Roi a conclus au nom de l'Etat avec les puissances étrangères. \* \* \* (17 mai 1814.)

*Acte d'union 6 août 1815.*—Art. 4. Le Roi aura le droit de rassembler des troupes, de déclarer la guerre et de faire la paix, de conclure et de rompre des traités d'alliance, d'envoyer et de recevoir des agents diplomatiques.

*Suisse.*—Art. 85. Les affaires de la compétence de deux conseils sont notamment les suivantes. \* \* \* 5° les alliances et les traités avec les États étrangers, ainsi que l'approbation des traités des cantons entre eux ou avec les États étrangers; toutefois les traités des cantons ne seront portés à l'Assemblée fédérale que lorsque le conseil fédéral ou un autre canton élève des réclamations. (Constitution fédérale, 29 mai 1874.)

*Vénézuéla.*—L'indépendance des capitaineries espagnoles fut initiée par les vénézuéliens sous l'influence de la révolution française et de l'indépendance acquise par les colonies anglaises.

Une convention fut convoquée par la junte insurrectionnelle de Caracas. Le premier congrès vénézuélien se réunit le 2 mars 1811 et proclama le 15 juillet suivant l'indépendance du pays. Une constitution fut votée le 21 décembre de la même année. Elle créa un système fédéral pour les sept provinces qui avaient pris part au soulèvement. Elle fut bientôt suspendue et remplacée par la constitution de Cadix de 1812. Le général Miranda imposa cette constitution après la défaite temporaire de l'insurrection. Vainqueur en 1818, organisa Bolivar un gouvernement dictatorial militaire. Un congrès réuni le 15 février 1819 à Angostura donne une constitution au

Vénézuéla; mais les pouvoirs discrétionnaires confiés au Président Bolivar et les événements militaires rendirent cette organisation politique illusoire. Après la délivrance de la Nouvelle-Grenade Bolivar fonda l'Etat-Unis de Colombie, qui ne se dégrégea qu'en 1830.

Le 6 mai 1830 le congrès vénézuélien, convoqué par le général Páez, se réunit pour rendre au pays une constitution qui conciliait les tendances centralistes et fédéralistes. Votée le 22 septembre 1830, dura près de vingt-sept ans, malgré les troubles et les pronunciamientos militaires qui agitèrent fréquemment le pays.

Une première révision eut lieu le 16 avril 1857 sous l'influence du Président Managas mais cette constitution n'eut qu'une durée éphémère. Une révolution renversa Managas au mois de mars 1858 et une autre constitution fut promulguée le 24 décembre de la même année. Celle-ci conçue dans un esprit démocratique et décentralisateur établissait le suffrage universel direct. Les fédéralistes et les centralistes l'attaquèrent à la fois comme contraire à leurs idées et la guerre civile relata en 1861. Elle ne termina que par le triomphe complet des fédéralistes.

Une nouvelle convention adopta la constitution fédérale le 28 mars 1864.

Cette constitution a été l'objet d'une révision importante le 23 mars 1874. La durée de la présidence réduite à deux ans et les présidents sortants furent déclarés non rééligibles.

Une dernière révision constitutionnelle a eu lieu au mois d'avril 1881. Les 2<sup>e</sup> Etats qui composaient la fédération depuis 1856 ont fait place à une division territoriale nouvelle. Ces différents Etats prenant le nom de sections ont été groupés en huit grand Etats (grandes Estados) outre un district fédéral, deux colonies et sept territoires.

La constitution de 1881 est toujours en vigueur. Toutefois l'organisation du conseil fédéral (pouvoir exécutif) a été modifiée par une loi du 10 mai 1889.

Une nouvelle révision de la constitution fut votée et promulguée le 21 juin 1893 par une assemblée constituante convoquée le premier janvier de cette année. L'article 77 en dehors des attributions que le Président exerce seul et sans contrôle ni assistance il en a d'autres qu'il ne peut exercer qu'après avoir eu le consentement ou l'avis d'autres pouvoirs. Il dirige les négociations diplomatiques et conclue les traités, sauf à les faire ratifier par le Congrès.

Par l'article 98 le Président peut faire usage des attributions à lui par l'article 77 \* \* \*.

L'article 72 qui était en vigueur au moment de la stipulation des

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\* Voir le texte officiel traduit dans le xxiii. volume de l'Annuaire de législation comparée, 1894, p. 836.

protocolos était le même: El Presidente de la unión tiene las siguientes atribuciones:

7. Dirigir las negociaciones y celebrar toda especie de tratados con otras naciones, sometiendo éstos á la legislatura nacional.

L'article 43 indiquait les attributions du pouvoir législatif: 15° decretar la guerra y requerir al ejecutivo nacional para que negocie la paz. 16° Aprobar el negar los tratados ó convenios diplomaticos. Sin este requisito no podran ratificarse ó canjearse.

Art. 60. Ninguna disposición legislativa tendrá efecto retroactivo, excepto en materia de procedimiento judicial y la que imponga menos pena.<sup>a</sup>

Dans la constitution promulguée le 21 juin 1893 dit à l'article 146: la nation et les Etats encourageront l'immigration et la colonisation des étrangers.

Il faut méditer l'article 150: Les prescriptions du droit des gens font partie de la législation nationale; elles seront spécialement applicables en cas de guerre civile. En conséquence, on pourra mettre fin à une guerre de ce genre par des traités conclus entre les parties belligérantes qui devront se soumettre aux pratiques des nations civilisées et en tout cas respecter a vie des particuliers.

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<sup>a</sup>Constituciones de la República y de los Estados y leyes orgánicas, etc., recopiladas de orden del ilustre americano general Guzmán Blanco. Caracas, Imprenta federal, 1876.

## COUNTER CASE OF BELGIUM.

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The undersigned delegate of the Belgian Government, after having examined into the notes and conclusions of the powers in question, can only insist upon the motions and the reasons of his first conclusions.

He thinks himself, however, obliged to add some considerations in reply to the conclusions of the three blockading powers.

I. Whereas the Italian Government asks himself if the protocols signed between Venezuela and the creditor nations, other than the blockading powers, have received the sanction and ratifications necessary to bind these nations, and that in this respect she reserves all her rights.

But as concerns Belgium, these reservations have a tendency toward alleging a right which the Belgian nation would eventually have in its relations with its Government, and that it is not the province of a third party to arrogate to itself such a right, that it is advisable more especially to observe that the above-mentioned protocols do not constitute treaties, properly so called; that they do not refer to the relations between two States in a general way or on certain fixed points, but that they simply constitute rules intended to assure the payment of private claims, to which rules the Belgian Government lent its services; that, further, article 68 of the Belgian constitution, which requires the assent of the Chambers to treaties which could burden the State or bind the Belgians individually, can only be applied by constant application to the conventional stipulations which would in a general way meddle with the State or the political rights of the Belgians or the rights which are guaranteed to them by laws; that such is not the case with the protocol of the 7th of May; that there is therefore no occasion to examine into the Italian reservations.

II. Whereas the Italian Government asserts that the creditor powers have acknowledged the justice and legality of the coercive measures taken by the blockading powers.

But that nowhere did such an acknowledgment occur; that in the present instance there is no question at all of knowing if the litigious acts were lawful or not, but solely if the blockading powers are entitled to a preference on the 30 per cent of the customs revenues.

Whereas it is of little importance to investigate like the British and German Governments, if at the beginning of the negotiations these two Governments set forth a claim to receive by right of priority a share of the customs revenues, and that the diplomatic correspondence invoked to support this statement is not pertinent.

That in fact it is certain on the one hand that under the guise of closing negotiations the protocols admitted to the allotment of the 30 per cent the claims of the powers similar to those of the blockading powers, and on the other hand they deferred to the court at The Hague the question of knowing if the latter (the blockading powers) were entitled to a preferential treatment on these 30 per cent.

That thus the question of a preference is presented in its entirety to the court at The Hague without any engagement contracted in regard to the blockading powers being invoked to decide it in the affirmative.

Whereas this question must be decided by taking as basis the respect of the law, and that it has been proved by the conclusions drawn by the undersigned that from this point of view the claim of the blockading powers has no foundation.

III. Whereas, however, they raise various objections that it is advisable to meet.

Whereas the British and German Governments protest against the idea that at the end of the war powers who did not take part in the coercive measures should have the right to share the fruits of victory, and that they remark that the latter powers owe to the operations of the blockading powers the consent of Venezuela to the diplomatic settlement of the claims formulated by them at her expense.

Whereas even if the facts described in their argument were accurate, the blockading powers would still be under the obligation of producing the deed by virtue of which they assert the right of exercising a preference; that the British Government asserts in vain that a creditor who has spent money to assure himself part of the assets of a common debtor must be paid in preference from that part of his assets, that, in fact, apart from the expenses set forth, which will be spoken of later on, an execution made by a creditor only gives him the right, in default of a deed assuring him preferential treatment, to participate at so much in the pound with the other creditors in the distribution of the moneys of his debtor.

But that it is well to remark that there is no question here of dividing the fruits of the victory, and that nothing proves that Venezuela, without the coercive measures of the blockading powers, would not have consented to pay her debts, but that, on the contrary, negotiations were in progress, that objections had been withdrawn, and that all promised to end favorably.

That, therefore, the blockading powers assert wrongfully that

with the war, the claims against Venezuela would not have been settled.

Whereas the said powers allege further that the pledge, consisting in the partial proceeds of the customs, was obtained by the blockading powers; that the other powers did not participate in their effort, and that it would be therefore unjust that an equal share of this pledge should be divided between the blockading and the peace powers.

But that the blockading powers assert wrongly that the proceeds of the customs constituted a pledge in their hands; that in reality they did not seize on these proceeds, but on the Venezuelan navy; that the customs remained in the hands of Venezuela; that the latter could therefore freely dispose of their proceeds in favor of all the creditor powers; that if it were otherwise, the existence of the pledge could only be recognized to the profit of the blockading powers, if it had a judicial basis, which do not exist; that, further, supposing that the blockading powers had seized on the customs revenues, they had afterwards given them up; that, further, they admitted by the protocols that all the powers should participate in the allotment of the 30 per cent, that the only point reserved was that of preference, but that, as it has been already mentioned, this point could only be decided in favor of the blockading powers, if they were able to invoke a judicial deed.

That it is well to observe further that the blockading powers secured for themselves certain special advantages by the protocols (arts. 2, 6, and 8 of the British protocol; 2, 3, 7, 8, and 9 of the Italian protocol; 2 and 6 of the German protocol), and that, therefore, even if it were admitted that their armed intervention should assure them a preferential treatment, they obtained it on their own terms.

Whereas the blockading powers remark further that they had to bear the expenses arising from the war; that they ran many risks, owing to the coercive measures which they employed, and that under these circumstances it would be unjust that the other powers should "ex-aequo" share with them the 30 per cent of the customs revenues.

But that it is advisable to remark, firstly, that nothing obliged the blockading powers to make war; that they did so, therefore, at their own risk and peril; that, further, they yielded to the signature of the protocol regulating the payment of the claims; that in these protocols they did not reserve the reimbursement of the war expenses by way of preference; that, further, they received large compensations, namely, the advantages for which they stipulated and which have been mentioned above, and that, therefore, the injustice which they allege no longer exists.



Whereas, in this order of ideas, the German Government observes that, if the blockading powers do not obtain a preferential treatment for their claims, the other powers must at least pay their share of the expenses that the blockading powers incurred in the conduct of the war.

But that this point was not submitted by the protocols to the Court of Arbitration at The Hague, which is therefore incompetent to judge of it; that, further, the blockading powers did not request the support of any other powers in making war, and did not assure themselves their assent; that, in fact, as it has been mentioned above, the blockading powers obtained from Venezuela by their coercive measures concessions which were not obtained by the peace powers.

IV. Whereas the blockading powers, without affirming anything to this effect, believe that certain claims are protected by special securities, which the tribunal at The Hague should take into consideration by virtue of the protocol of the 7th of May, but that it would be for them to denounce these securities; that, besides, with regard to the Belgium claims, and especially the claim of the Caracas Water Supply Company, the first conclusions supply decisive explanations.

V. Whereas the other powers in question other than Belgium do not set forth in their notes the claims of which they avail themselves; that, however, they should have made known their claims in this respect; that at least it is important for the interests that the undersigned defends; that the latter (the interests) should be recognized and sanctioned with regard to the allotment of the 30 per cent by the decision to intervene; that it is besides useful to all parties that this 30 per cent should continue to be deposited by the Venezuelan Government with the Bank of England at Caracas, reserving to the latter the sending regularly to each of the creditor powers the share due to them, and especially to effect this payment for Belgium into the hands of "la Société Générale" in accordance with the decision of the Caracas mixed commission.

By these motives,

May it please the arbitral court at The Hague,

To repel all the conclusions of the blockading powers, to allow to Belgium the conclusions previously drawn up in the terms of their purview, to say that the sums due to Belgium shall be deposited by the Venezuelan Government into the hands of the Bank of England at Caracas, on condition of transferring the same to the Société Générale in Brussels, to decide as to costs according to law.

Respectfully submitted by—

CH. WOESTE.

[French text.]

Le soussigné, délégué du gouvernement belge, après avoir pris connaissance des mémoires et conclusions des puissances en cause, ne peut que persister dans le dispositif et les motifs de ses premières conclusions.

Il croit toutefois devoir y ajouter quelques considérations en réponse aux conclusions des trois puissances bloquantes.

I. Attendu que le gouvernement italien se demande si les protocoles signés entre le Vénézuéla et les puissances créancières autres que les puissances bloquantes ont reçu les sanctions ou ratifications nécessaires pour lier ces puissances, et qu'il réserve à cet égard tous ses droits.

Mais qu'en ce qui concerne la Belgique, ces réserves tendent à exciper d'un droit qu'aurait éventuellement la nation belge dans ses rapports avec son gouvernement, et qu'il n'appartient pas à des tiers de se prévaloir d'un tel droit; qu'il convient surabondamment de remarquer que les protocoles susdits ne constituent pas à proprement parler des traités; qu'ils ne visent pas, d'une manière générale ou sur certains points déterminés, les relations entre deux Etats; qu'ils constituent simplement des règlements destinés à assurer le paiement de créances privées, règlements pour lesquels le gouvernement belge a prêté ses bons offices; que du reste l'article 68 de la constitution belge, qui exige l'assentiment des chambres pour les traités pouvant gréver l'Etat ou lier individuellement des Belges, ne peut s'entendre, d'après une application constante, que des dispositions conventionnelles qui porteraient par voie générale quelque atteinte à l'état ou à la capacité des Belges ou à des droits qui leur sont garantis par des lois; que tel n'est pas le cas du protocole du 7 mai; qu'il n'y a donc pas lieu de s'arrêter aux réserves italiennes;

II. Attendu que le gouvernement italien prétend que les puissances créancières ont reconnu le droit et la légalité des actes de force posés par les puissances bloquantes;

Mais que nulle part pareille reconnaissance n'est intervenue; que, dans l'instance actuelle, il ne s'agit nullement de savoir si les actes litigieux étaient légitimes ou non, mais uniquement si les puissances bloquantes ont droit à un privilège sur les 30 pour cent des douanes;

Attendu qu'il importe peu de rechercher, comme le font les gouvernements anglais et allemand, si, au début des négociations, ces deux gouvernements ont émis la prétention de recevoir par priorité une quotité du produit des douanes, et que les dépêches diplomatiques invoquées pour appuyer ce soutènement ne sont pas relevantes;

Qu'en effet, il est certain, d'une part, que, sous forme de clôturer des négociations, les protocoles ont admis à la répartition des 30 pour

cent les réclamations des puissances analogues à celles des puissances bloquantes, et, d'autre part, qu'ils ont déféré au tribunal de La Haye la question de savoir si ces dernières avaient droit sur ces 30 pour cent à un privilège;

Qu'ainsi la question du privilège se présente entière devant le tribunal de La Haye, sans qu'on puisse invoquer, pour la résoudre affirmativement, aucun engagement contracté vis-à-vis des puissances bloquantes;

Attendu que cette question doit être résolue en prenant pour base le respect du droit, et qu'il a été démontré dans les conclusions prises par le soussigné, qu'à ce point de vue, la prétention des puissances bloquantes est dépourvue de tout fondement;

III. Attendu néanmoins qu'elles soulèvent diverse objections qu'il convient de rencontrer;

Attendu que les gouvernements allemand et anglais s'élèvent contre l'idée qu'à la fin de la guerre, des puissances qui n'ont pas participé aux mesures coercitives, auraient le droit de partager les fruits de la victoire, et qu'ils font remarquer que ces dernières puissances doivent aux opérations des premières le consentement du Vénézuéla au règlement diplomatique des réclamations formulées par elles à sa charge:

Attendu que si même les faits étaient dans cette argumentation dépeints d'une manière exacte, encore les puissances bloquantes auraient-elles l'obligation de représenter le titre en vertu duquel elles prétendent exercer un privilège; qu'en vain, le gouvernement anglais soutient-il qu'un créancier qui a dépensé de l'argent pour s'assurer une partie du patrimoine d'un débiteur commun doit être payé de préférence sur cette partie de son patrimoine; qu'en effet, à part les frais exposés dont il sera parlé plus loin, une saisie opérée par un créancier ne lui donne que le droit, à défaut d'un titre lui assurant un traitement préférentiel, de participer au marc le franc avec les autres créanciers à la distribution des deniers de son débiteur;

Mais qu'il convient de faire remarquer qu'il ne s'agit pas ici de partager les fruits de la victoire, et que rien n'établit, que, sans les mesures de guerre des puissances bloquantes, le Vénézuéla n'aurait pas consenti à payer ses dettes; que, bien au contraire, les négociations se poursuivaient, que des objections avaient été levées et que tout permettait d'espérer une issue favorable;

Que c'est donc à tort que les trois puissances bloquantes donnent à entendre que, sans la guerre, les créances à charge du Vénézuéla n'auraient pas été réglées;

Attendu que les dites puissances allèguent encore que le gage consistant dans le produit partiel des douanes a été obtenu par l'effort des puissances bloquantes; que les autres puissances n'ont pas participé à cet effort, et qu'il serait donc injuste qu'un partage égal de ce gage se fasse entre toutes les puissances, bloquantes ou non;

Mais que c'est à tort que les puissances bloquantes soutiennent que le produit des douanes constituait un gage entre leurs mains; que dans la réalité des choses, elles s'étaient emparées, non de ce produit, mais de la marine vénézuélienne; que les douanes sont restées entre les mains du Vénézuéla; que celui-ci pouvait donc disposer librement de leur produit en faveur de toutes les puissances créancières; qu'en fût-il autrement l'existence du gage ne pourrait être reconnue au profit des puissances bloquantes que si elle avait une base juridique, ce qui n'est pas; que d'ailleurs, à supposer que les puissances bloquantes se fussent emparées du produit des douanes, elles l'ont abandonné; que, bien plus, elles ont admis par les protocoles que toutes les puissances pussent participer à la répartition des 30 pour cent; que le seul point réservé était celui du privilège; mais que, comme il a été dit plus haut, ce point ne pourrait être tranché en faveur des puissances bloquantes, que si elles étaient à même d'invoquer un titre juridique;

Qu'il convient au surplus de remarquer que les puissances bloquantes se sont assuré certains avantages spéciaux par les protocoles (articles 2, 6 et 8 du protocole anglais, 2, 3, 7, 8 et 9 du protocole italien, 2 et 6 du protocole allemand), et que, dès lors, si même il fallait admettre que leur intervention armée devrait leur assurer une situation de préférence, elles ont obtenu cette situation dans les termes où elles l'ont demandée;

Attendu que les puissances bloquantes font encore remarquer, qu'elles ont dû subir des dépenses du chef de la guerre; que les mesures coercitives qu'elles ont employées leur ont causé des risques divers, et que, dans ces circonstances, il serait inique que d'autres puissances pussent ex æquo avec elles partager les 30 pour cent du produit des douanes;

Mais qu'il y a lieu d'observer d'abord que rien n'obligeait les puissances bloquantes à faire la guerre, qu'elles l'ont donc faite à leurs risques et périls; que, d'autre part, elles ont prêté les mains à la signature d'arrangements réglant le paiement des créances; que, dans ces arrangements, elles n'ont pas réservé le remboursement des frais de guerre par privilège; qu'elles ont d'ailleurs reçu de larges compensations par les avantages qu'elles ont stipulés et qui ont été ci-dessus relatés; que dès lors l'iniquité qu'elles articulent n'existe pas;

Attendu que, dans cet ordre d'idées, le gouvernement allemand fait remarquer que, si les puissances bloquantes n'obtiennent pas un traitement préférentiel pour leurs créances, au moins les autres puissances devraient payer leur part dans les dépenses que les puissances bloquantes ont effectuées du chef de la guerre;

Mais que ce point n'a pas été soumis par les protocoles au tribunal arbitral de La Haye; qu'il sort donc de sa compétence; que d'ailleurs

les puissances bloquantes n'ont demandé le concours d'aucune autre puissance pour faire la guerre et ne se sont pas assuré leur assentiment; qu'enfin, ainsi qu'il a été dit plus haut, les puissances bloquantes ont dû à leurs mesures de guerre d'obtenir du Vénézuéla des concessions que n'ont pas obtenues les puissances non bloquantes;

IV. Attendu que les puissances bloquantes, sans rien affirmer à cet égard, croient que certaines créances sont protégées par des garanties spéciales que le tribunal de La Haye devrait prendre en considération en vertu du protocole du 7 mai; mais qu'il leur appartiendrait de dénoncer ces garanties; qu'au surplus, en ce qui concerne les réclamations belges et surtout la créance de la Compagnie des Eaux de Caracas, les premières conclusions fournissent à cet égard des explications péremptoires;

V. Attendu que les puissances en cause autres que la Belgique ne fixent pas dans leurs mémoires les créances dont elles se prévalent; qu'il y a lieu cependant pour elles de faire connaître leurs prétentions à cet égard; que tout au moins il importe aux intérêts que défend le soussigné, que ceux-ci soient reconnus et consacrés, au point de vue de la répartition des 30 pour cent, par la décision à intervenir; qu'il est, au surplus, utile à toutes les parties que ces 30 pour cent continuent à être déposés par le gouvernement vénézuélien à la Banque d'Angleterre à Caracas, sauf à celle-ci à envoyer régulièrement à chacune des puissances créancières le pro rata lui revenant et notamment à opérer pour la Belgique ce versement entre les mains de la Société Générale, conformément à la décision de la commission mixte de Caracas;

Par ces motifs,

Plaise au tribunal arbitral,

Rejeter toutes les conclusions des puissances bloquantes, allouer à la Belgique les conclusions précédemment prises dans les termes de leur dispositif; dire que les sommes revenant à la Belgique seront déposées par le gouvernement vénézuélien aux mains de la Banque d'Angleterre à Caracas, à charge par celle-ci de les transmettre à la Société Générale à Bruxelles; dépens comme de droit.

CH. WOESTE.

## COUNTER CASE OF THE FRENCH REPUBLIC.

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### CONTENDED PREFERENTIAL TREATMENT OF THE BLOCKADING POWERS.

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We believe we have considered and discussed in our argument most of the arguments of the cases presented on behalf of the blockading powers. We therefore take the liberty of referring to the same as regards the argumentation as a whole, and we intend in this counter argument only to insist on such points as appear worthy of further consideration.

We first of all observe an essential difference between the starting point of the reasoning of the blockading powers and our own.

According to their argument, the allies have been in possession of an advantage which the other powers are now contending. They held a pledge, a mortgage, which they legitimately oppose to those powers who have not, or at least who only subsequently obtained, the same securities. And with that object different texts of Roman law are resorted to concerning the priority of taking possession or the priority of mortgage, and especially the adage *prior tempore potior jure*.

This reasoning is founded on an absolute error of fact, as we think is proved in our argument. The contended situation of fact has never existed. We do not think that the fact of the forces of the allied powers having seized Venezuelan ships in more or less number can be seriously used as an argument; there is no question of apportioning the value of such ships. The 30 per cent of the revenues of the customs of La Guaira and Puerto Cabello are alone in question and, on the basis of positive texts, we declare most emphatically that this pledge, if such an assignment can thus be qualified, has never been possessed exclusively by the blockading powers. As regards the negotiations which were carried on at Washington between the representatives of Germany, Great Britain, and Italy on the one part and the representatives of Venezuela on the other part, and which led to the protocols of February 13, 1903, there exists a contradiction between the Venezuelan preliminary examination and the cases presented on behalf of the British and German Governments. Was there any moment when it could be said that Mr. Bowen agreed or



appeared to agree to the assignment of the said 30 per cent to the exclusive benefit of the blockading powers? Per contra, did not the blockading powers agree or appear to agree at one time to the non-equivocal intention of Venezuela to make a settlement applicable to all the creditor powers? This we have not to decide; it is a point to be especially discussed between counsel of the blockading powers and that of Venezuela, who are particularly competent to elucidate this matter.

As regards this point, we have only to say that, in our opinion, it seems to be, above all, one of political and historical interest, but not of juridical and present interest. What stands out clearly from the diplomatic correspondence, whatever be its interpretation according to the preceding point of view, is the fact that there never was any express formal agreement on this capital question of an exclusive or general assignment of the 30 per cent.

As soon as the matter was precisely stated, absolute disagreement became manifest. An understanding was attempted, various proposals were made. Mr. Bowen would have conceded the exclusive collection for one month as a satisfaction to honor. Great Britain would have been satisfied with 20 per cent, had those 20 per cent been exclusively assigned to the blockaders. That agreement was not arrived at because Venezuela insisted on equality of treatment to the creditor powers without distinction. Then were signed the protocols of February '13, 1903, which became the starting point of the proceedings before this Tribunal of Arbitration. Article V of the Anglo-Venezuelan protocol begins as follows:

The Venezuelan Government, being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in Article III, and similar claims preferred by other governments, undertake to assign to the British Government \* \* \*

A similar assignment was made for the benefit of the two other blockading powers, as well as of the pacific powers, vide for example the provision of Article V of the Franco-Venezuelan protocol (appendix to the French argument). The protocols which were thus signed, from February to April 3, 1903, obviously constitute one whole. The assignment is consented by Venezuela in the same terms and must carry the same effect. All the powers are on the same footing, not in the sense of an equal and proportionate apportionment then and there definitely agreed, as was desired by Venezuela, but in the sense of all the powers submitting to the award of this Tribunal of Arbitration. Such is the provision of paragraph 2 of the same Article V of the protocol of February 13:

Any question as to the distribution of the customs revenues so to be assigned, and as to the rights of Great Britain, Germany, and Italy to a separate settlement of their claims, shall be determined in default of arrangement by the tribunal at The Hague, to which any other power interested may appeal.

These last words clearly prove that the settlement thus provided is a general settlement, and that nothing therein is special to the blockading powers. Vide also Article V, paragraph 3, of the Franco-Venezuelan protocol of February 27, 1903.

We therefore fully maintain the assertions of our argument. A security was consented by the debtor on a part of his resources in favor of all his creditors, leaving the Tribunal of Arbitration to decide how the apportionment shall be made. No argument can be based on a possession which does not exist, nor on a priority of time which does not exist either. The Italian case seems to indicate that this tribunal might take into consideration the order of the dates on which the various protocols were signed. The blockading powers, who have protocols dated February 13, would in that case be admitted before the United States, who signed only on February 17, and so on. We do not think this system likely to be upheld before this tribunal, and we consider as useless to insist on its refutation. It is too evidently inconsistent, both with the letter and the spirit of the stipulations. One thing or the other stands out clearly from these stipulations—either, as we contend, there shall be an equal apportionment between all the powers without any distinction whatsoever, or, should we succeed, the claims of the three blockading powers shall be wholly satisfied first, and, after such payment, the 30 per cent shall proportionately be divided between the other powers. We do not suppose that the United States will uphold that, by reason of their protocol being signed on February 17, their claims shall be satisfied first before those of Mexico, France, etc. Moreover, where the rule *prior tempore potior jure* applies, such rule must apply to the end. It is not only a question of days but also of hours. The blockading powers did not sign one single protocol, but three separate protocols. Have the signatures been exchanged exactly at the same hour? That we do not know. An argument has been made of acts of force, of the seizure of ships as constituting a sort of taking possession. If that were so, is it certain that Italy would stand on the same footing as her allies, seeing that she did not join them at the outset?

We read in the German case:

As soon as the Venezuelan representative explained that the 30 per cent were to be distributed equally amongst all the creditors the blockading powers entered a protest. This protest is preserved intact in the protocol of the 13th February, 1903, and must stand entirely unaffected by any agreement which the Venezuelan Government may have entered into with other creditor powers. For the Venezuelan Government was not justified in making any arrangements with other powers by which the engagements previously entered into with the blockading powers would be impaired.

The above statement can not be admitted as exact. It can not be said that the situation of the blockading powers, who did not accept

Mr. Bowen's explanation, has not been affected by the signature of the protocols of February 13, 1903. So long as these signatures were not given the blockading powers could maintain their nonagreement on merely political grounds, or, better said, without giving any reasons. In the absence of an agreement the blockade was not raised, and this was the mode of pressure left to them against Venezuela. After the signature of the protocols the situation changed entirely, notwithstanding the argument in the German case. True, the blockading powers maintain that they are to be preferred, but as they agreed to refer the question of priority to a tribunal of arbitration, it must be juridical reasons that they must offer in support of their pretention. Their coercitive action can no longer have the effect which it had naturally when they were discussing with Venezuela alone.

On the other hand, the German case seems to consider the various arrangements entered into by the Venezuelan Government with the other powers as incorrect. But those arrangements were virtually foreseen by the protocols of February 13, seeing that these protocols contemplated a settlement between all the creditor powers before a tribunal of arbitration. Also see No. 2 of the conclusion of the British case, which, if taken literally, would make our presence at The Hague almost inexplicable.

The other creditor powers took no part in the controversy between the blockading powers and the United States of Venezuela, and can not claim as a matter of right to take any part in the settlement of that controversy.

Why then are the powers, who took no part in the blockade, entitled to be present at The Hague? Is it not owing to a juridical title, and by a right to which they are entitled under international agreements?

The British case manifests surprise at seeing the interference of neutral powers, after the conclusion of the war, who demand to share in the fruits of victory. It is necessary to quote literally:

The contention on behalf of the other creditor powers, if it be put forward as a matter of legal right, must come to this, that, at the conclusion of any war, a neutral is entitled to interpose between the successful and the unsuccessful belligerent, and to demand, as of right, to share in the fruits of the victory on the ground that he, too, had claims against the vanquished, although he took no steps to enforce those claims, and had not protested against the action taken by the other belligerent to enforce those claims. Such a proposition can, it is certain, find no precedent in the history of nations.

This reasoning rests upon a confusion; it assimilates two situations which are not identical.

Doubtless, when, after a war, the consequences of victory have been settled between victor and vanquished, neutral powers have no right to interfere nor to discuss the settlement save on political and not on juridical grounds, unless by such settlement some treaty or positive engagement has been disregarded. Thus, if the blockading powers

had obtained definitely the total revenues of the customs of the two ports, they would have given rise to a juridical objection, because such an assignment would be contrary to the positive right previously conceded for the benefit of bondholders of the diplomatic debt. But had the said blockading powers obtained purely and simply 30 per cent of the receipts of the two ports, the other powers would have been legally obliged to accept this result of the coercitive measures carried out against their debtor. They have, indeed, accepted payment in cash of important sums which Venezuela was obliged to effect to the blockading powers. That payment was prejudicial to pacific powers, who thus encountered, through the reduction of the resources of their debtor, more difficulty in obtaining satisfaction of claims, at least as indisputable as the claims which were thus satisfied without justification on the part of the creditor and without control on the part of the debtor. Such is the natural result of an arrangement entered into between victor and vanquished.

The situation is quite different as regards the 30 per cent, the apportionment of which constitutes the present contest. No settlement was come to between the blockading powers and Venezuela to the advantage of the former which the pacific powers might wish to have altered for their benefit. We can not state too often that nothing similar occurred. No definitive concession was granted by Venezuela; there merely exists an assignment subordinate to a clearly defined condition. In the settlement itself which concludes the hostilities and determines the conditions of the raising of the blockade, the intervention of the other creditor powers is expressly provided for by the statement that the question of preferential treatment shall be submitted to the tribunal at The Hague to which any other interested power may resort. It is a matter for surprise that now this intervention should be presented as a sort of encroachment. It was agreed to, with more or less good grace perhaps, but it was agreed to and sanctioned by the protocols.

We are asked to remember in what situation the allied powers and Venezuela, respectively, stood before the raising of the blockade, when the other powers made no protest and while they abstained from military operations. The allies were in a position to continue the blockade until their separate demands were complied with; while the other creditor powers were not then in a position to exert any such pressure on Venezuela. (British case, p. 7.) What does this prove? Simply that the allies did not secure by their victory all its possible consequences, and that they did not push their advantages to the utmost. We have not to seek the perhaps complex motives of their conduct; that regards but themselves. We have only to mark this attitude and to draw from the agreement arrived at its natural and logical consequences. In fine, Venezuela, who gave way on so

many important points, did not give way on that point. She maintained her will to treat all the creditor powers on a footing of equality. Would she have persisted in that attitude if the blockade had been maintained? This we have not to consider. In the end the blockading powers gave way. They were eventually contented to accept equal treatment, should that treatment be admitted by this tribunal, before whom we do not fear to repeat that all the powers appear in an absolutely equal situation of fact. It behooves this tribunal to appreciate the various juridicial considerations which are submitted thereto and to decide a question of law, not a political question. We must accordingly specially contend now two paragraphs of the conclusion of the British case which state that the contention of the pacific powers is to be rejected because—

(1) The Venezuelan Government expressly accepted the conditions, insisted on from first to last by His Majesty's Government, that adequate security should be provided for the satisfaction of the claims of the blockading powers. The reference to this court was made on the basis of that condition, and to that condition it is submitted the court should give effect.

We may here compare the following statement contained in the German case considering the eventuality of all the powers being admitted to share in the apportionment of the 30 per cent. We do not stop to examine what may be looked upon as exaggerated in the figures quoted in connection with the nonqualification of certain of the claims to participate in the 30 per cent. We examine the reasoning only. After showing that were all the claims to be admitted the proportion pertaining to each would be very small, the case continues as follows:

But even if a considerable part of the claims should not be admitted, the remaining amount would be so large that after all the amortization of the capital would not be effected within a reasonable time. It is therefore apparent that such an arrangement would not constitute a satisfaction of the claims of the blockading powers as promised by President Castro.

It is attempted in this way to intrust to this tribunal a mission which does not pertain thereto, and to limit that mission in a sense favorable to the interest of the blockading powers but inconsistent with the texts themselves by virtue of which this tribunal is sitting. This tribunal has, indeed, to determine whether a preferential treatment is or is not to be accorded to the blockading powers and, as it is a tribunal, it will decide according to principles of law and equity. In no way whatsoever has it to consider how the blockading powers are to obtain the satisfaction they sought when they resorted to coercitive measures. Whatever the British conclusion may say to the contrary, nothing of that sort is contained in the protocols, either in those of May 7 or in those of February 13. At the time of the raising of the blockade it belonged to the powers to foresee eventualities, to



examine what respective consequences might result from their agreement to an arbitral award, to consider what dividend their claims might be reduced to if their contention to a preferential treatment were rejected. It may be that their calculations were erroneous and that they now recognize their mistake in granting that concession. It is of little importance in law. This tribunal of arbitration has to apply the protocols, has to weigh the respective arguments, without the preoccupation put forward in the conclusion of the British case, that an adequate security be provided for the satisfaction of the claims of the blockading powers. It appertained to them to be wary before February 13, 1903.

The other reason for rejecting the contention of pacific powers, as appears in the conclusion of the British case, is expressed as follows, because—

(5) In the circumstances existing at the time of the signing of the protocols the blockading powers were entitled to preferential and separate treatment.

According to this, the tribunal for decision would have to refer to the time when the protocols of February 13 were signed to consider the situation of fact such as it then stood, and to examine whether from that situation the blockading powers were entitled to preferential and separate treatment, sentence which by an ingenious ambiguity may mean that these powers were in a position to obtain preferential treatment, of which there can be little doubt seeing the disproportionate forces of Venezuela and her opponents. But can the question be thus established? No, not for one moment. By such conclusion Great Britain demands from this tribunal an action on behalf of the powers which it did not suit the latter to take themselves on February 13. Great Britain would now wish to see restored to the said powers the advantages of fact which they held at that time and from which, in their present opinion, they failed to draw all the possible benefit. The blockading powers would then, by being less exacting in regard to the 30 per cent, have obtained the advantage of a more rapid solution because the status resulting from the blockade weighed not only on Venezuela. And now, looking back, they ask this tribunal to grant them that advantage which they might have been able to secure by resisting Venezuela and maintaining the blockade. It is needless to insist to demonstrate that in this there lies a contradiction and inadmissibility. This tribunal has to state the law; it has not to consider what might have been done, but what was done. On this point there is no doubt. The blockaders, satisfied with the immediate and no trifling sacrifices consented by Venezuela, accepted, regarding the 30 per cent to run the risks of a suit. There can be no question of replacing them in their previous status.



The cases presented on behalf of the blockading powers invoke the risks and expenses incurred, to justify their claimed right of preference. The German case insists more particularly on that point; the Italian case passes over it somewhat lightly; the British case stays in the sphere of principles: Whether that trouble and expenses be greater or less matters not; for the principle, if it be a principle, must apply equally in cases where blood and treasure have been sacrificed, ships sunk, and armies annihilated, as in case where hostilities have been comparatively innocuous. Is it equitable that neutral powers, who have not incurred those sacrifices or those expenses, obtain the same advantages?

We answer firstly that it is not the fact that the pacific powers hold the same advantages as the blockading powers. These have, over and above the 30 per cent, derived serious profit from their intervention. We have already mentioned this in our argument (p. 40), but we desire to complete what we exposed on the subject. We merely indicated the sums which have been effectively paid<sup>a</sup> and we may remark, by the way, that if Germany, according to her case, has been particularly sensible to the risks of the operations, she in fact received by far the most important sum, viz, 1,718,815 bolivars; there was compensatio. But this actual payment is not the only advantage which accrued to the blockading powers. If we take the Italo-Venezuelan protocol, we find Article III runs as follows:

The Venezuelan Government accept, recognize, and will pay the amount of the Italian claims of the first rank derived from the revolution, 1898-1900, in the sum of 2,810,255 bolivars.

It is expressly agreed that the payment of the whole of the above Italian claims of the first rank will be made without being the same claims or the same sum submitted to the mixed commission and without any revision or objection.

There are consequently further claims for an important amount which are admitted without any revision or control whatsoever, and it is well known that claims grounded on facts of this kind generally give rise before arbitral commissions to many difficulties as concerns their existence, the amount of the prejudice, and even as concerns the principle of responsibility. All these difficulties are laid aside.

As regards other claims provided for by Article IV of the same protocol, they are to be submitted to a mixed commission, but the duty of the said commission is limited, the Venezuelan Government

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<sup>a</sup> We have stated that the allies, in demanding this right of preference for some of their claims, recognized implicitly that their other claims were to be ruled by the general law. We can but consider as somewhat paradoxical the assertion in the Italian case that the Italian Government, after receiving £5,500, and Mr. Bowen having recognized their right to the sum of 2,810,255.95 bolivars, it was therefore unjust and unfair to refuse a privileged payment for the whole amount of the claims. In the matter of privileges, an argument of this nature is not ordinarily put forward.

agreeing to the principle of responsibility. In this resides a further and appreciable advantage.

Similar stipulations exist in the protocols between Germany and Great Britain.

As regards the expenses incurred in connection with the operations, the German case (p. 12) states that the blockading powers are allowed by international law to require from Venezuela the payment of their expenses, according to the principle which charges the debtor with such expenses as the creditor had to incur to recover his debt. This is not a matter for discussion here, but, in fact, the blockading powers did not speak of expenses at the time of the raising of the blockade, and their later attempt to give this tribunal the right to grant them an indemnity on that account proved unsuccessful. That indemnity, which the tribunal can not grant directly, can it be granted by the said tribunal by admitting the contended preferential treatment? This the German case appears to indicate; according thereto the blockading powers would have renounced their claim to expenses from Venezuela under the tacit proviso that they would receive some real satisfaction. This is not admissible. It does not pertain to the pacific powers to be charged with the costs of the contended generosity toward Venezuela, and there may be no proportion between expenses incurred in connection with the operations and the advantage resulting from the preferential treatment.

Various arguments of analogy drawn from private law (vide for example British case) are resorted to by the blockaders, but we shall pass them rapidly over, having refuted them by anticipation.

It is remarked at first that Venezuela is not insolvent: that there is no question of dividing her whole estate, but only a portion of the same. The case would be analogous to that of a creditor who had taken particular property of a debtor in execution and would be therefore entitled to be paid out of the proceeds, in priority to the other creditors. But this would be resolving the question by the question. We have too frequently explained that there was no exclusive pledge at any moment for it to be necessary for us to insist again on that point. The British case adds: "Nor must it be forgotten that, at the time of the signing of the protocols, they did hold actual security in the shape of the Venezuelan navy." We fail to see any connection between the mere fact of the seizure of Venezuelan ships and the apportionment of the 30 per cent. That falls within the range of considerations we have previously enlarged upon. The blockading powers had the means to crush the resistance of Venezuela, but did not use them.

The British case next rests upon the principle according to which a creditor is privileged, who incurs expenses to preserve the property of a common debtor; some text of Roman law are quoted in support,

and it is added that such a principle is recognized by jurisprudence in every civilized country. Far be it from us to contest such a principle, which we mentioned ourselves (French argument, p. 39), but we, at the same time, gave its indisputable significance as results from the very texts referred to. The privilege recognized to the creditor, who incurs expenses to preserve the property of a common debtor has for its object to secure the recovery of the special claim born of such expenses and not to secure the recovery of otherwise originated claims which the same creditor might happen to hold. That would be absurd. If such a simple idea were applied in this case, it would follow that the blockading powers would be entitled to a right of priority in favor not of their various claims but of the expenses which they had to incur, or, at least, of a portion of the said expenses, because, owing to those expenses, they obtained personal advantages. But, as above stated, the blockaders are not entitled to demand such expenses.

In the same order of reasoning, the British case further quotes the cases of bottomry and salvage, where a privilege is accorded by the jurisprudence of all civilized nations to the creditor, even posterior in date, who has secured the common pledge. The answer is identical. Such privilege secures salvage expenses, but not the various claims which the creditor may hold against the debtor whose property has been saved.

The reasons alleged by the blockading powers in favor of the contended privilege are not, therefore, admissible, and we can confidently uphold the conclusion of our argument. We beg to remind this tribunal that we have shown the principles of law and equity, which justify an equal treatment of all the creditor powers, also the all important precedent afforded by recent Chinese events, and we take leave to remark that international practice, which was to have been a weapon in the hands of our opponents, has not afforded them a single example in favor of their contention.

We therefore respectfully request this tribunal of arbitration to decide that any preferential or separate treatment be not granted to the blockading powers, and that the 30 per cent be divided proportionately among all the claims to which the said 30 per cent have been assigned by the various protocols.

This tribunal of arbitration will have filled but a part of its duty if it decides only in abstracto the question of preferential treatment. The protocols of May 7 intrust to its enlightened members a wider mission, in case of a decision adverse to the blockading powers.

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers. (Art. I, par. 3.)

This tribunal will therefore take the necessary steps in order that its decision be practically executed. At first it would be expedient to fix the rate of the interests to which the various creditors shall be entitled by reason of the delay which they will have to suffer before being satisfied.

It is desirable that this tribunal be pleased to decide, for that purpose, that each power shall present as soon as possible the list of its own claims which have been previously entitled to a privilege and the list of such claims which are to share in the distribution of the said 30 per cent.

Will be found in the appendix to this counter argument:

1. A list of the creditors who already enjoy a special security (Appendix I—A, B, C, D);

2. A list of such claims which, benefiting by no particular security and having been settled by a mixed commission according to protocol of Washington, dated February 27, 1903, are to be comprised in the apportionment of the 30 per cent (Appendix II);

3. The situation of the claim by the postal service against the Venezuelan Government, which claim arises from the conventions which govern the Union Postale Universelle (Appendix III);

#### CONCLUSION.

Whereas it results clearly from the negotiations which preceded the protocols of February 13, 1903, as they appear in the diplomatic correspondence, that there never existed any agreement between Venezuela and the blockading powers concerning the unconditional assignment to the same of the 30 per cent;

And whereas there has been on behalf of Venezuela only one assignment to all the powers of the said 30 per cent for certain categories of claims, and an agreement not having been concluded on this point, the parties are resolved to refer this question to arbitration;

And whereas all parties appear before this tribunal on a footing of equality, none enjoying the advantage of possession;

And whereas this tribunal, who is intrusted to state the law, has to base its decision on juridical grounds, and not according to the situation of fact existing at the time of the signature of the protocols of February 13, 1903; and it can not pertain to this tribunal to revive that situation from which the blockading powers drew such consequences as they thought fit at the time of the signature of the said protocols;

And whereas it pertains to the blockading powers to prove the existence of their contended right of priority, which proof they do not submit;

And whereas this preferential treatment is justified neither by the principles of law nor by those of equity nor by international practice:

And whereas equality between creditors as between States is the rule;

And whereas the analogy with private law can not be resorted to in favor of the blockading powers because if the creditor who incurs expenses for securing the common pledge is entitled to a privilege, it is in favor of his claim against such expenses only and not against the other dues he may claim; and, moreover, seeing that according to the circumstances of the present case the blockading powers can not claim either from Venezuela or from neutral powers the costs of their operations;

And whereas the blockading powers have drawn positive and no trifling advantages from their intervention, either by way of immediate payment of certain claims exempted from revision or by settlement of other claims also exempted from any discussion;

And whereas the blockading powers vainly contend that neutrals have no right to interfere between victor and vanquished to deprive the former of the fruits of victory;

And whereas this intervention did not take place after both belligerent parties had settled the consequences of the defeat; and, on the contrary, the said intervention has been provided for in the settlement itself, and was thus accepted by the belligerents themselves;

And whereas the principle of equality was, without difficulty, recognized at the time of the Chinese expedition of 1901; and this precedent is of the more importance to note because the blockading powers took part in it, and because the powers, who interfered militarily and admitted others to concur with them, obviously were in position to enforce a contrary solution;

And whereas the denial of any preferential treatment to the blockading powers is furthermore recommended by the serious consequences that would result from a contrary decision, which decision would tend to incite to acts of violence, and which would be manifestly inconsistent with the letter and spirit of the provisions of the convention of 1899, signed by the blockading powers as well as by neutral powers;

And whereas if preferential treatment is rejected, it pertains to this tribunal to decide how the said customs revenues shall be distributed among all the creditor powers;

And whereas this tribunal has to take such steps as will insure the carrying out of its decision;

And whereas, according to compromise, this tribunal has to decide by whom the costs of this arbitration shall be paid; and it is a gener-

ally admitted rule that the party who succumbs in its contention has to bear the costs.

By these motives, may it please this tribunal:

(1) As regards the mission intrusted to this tribunal under Article I, paragraphs 1 and 2, of the Washington protocols, dated May 7, 1903 (equal or preferential treatment);

To declare that Germany, Great Britain, and Italy have no right to a preferential treatment on the 30 per cent of the revenues of the customs of La Guaira and Puerto Cabello assigned by Venezuela to the various creditor powers;

To declare therefore that the said 30 per cent shall be divided proportionately to the amount of the claims, which, under the separate protocols agreed between the parties, are admitted to share in this distribution.

(2) As regards the subsidiary mission intrusted to this tribunal under Article I, paragraph 3, of the protocols of May 7, 1903 (distribution of the 30 per cent in case of nonpreferential treatment);

To put on record that France lays before this tribunal the lists of the different claims against Venezuela, which will be found *infra* in the Appendix;

To declare that such powers, who so far have not done so, shall submit to this tribunal and notify to each party the list of its own claims which are already privileged and the list of such claims which are to share in the distribution of the said 30 per cent;

To fix a minimum delay under penalty of foreclosure for submitting the said account;

To declare that France shall be admitted to share in the 30 per cent of the customs revenues of La Guaira and Puerto Cabello for a total sum of 2,677,537.26 bolivares, which represents the amount of the French claims awarded by final decision of the mixed commission instituted under the Franco-Venezuelan protocol of February 27, 1903. (Appendix No. II.)

To state and give judgment that, at sight of a certified copy of the decision to intervene, delivered by his excellency the general secretary of this tribunal, the representatives of the Bank of England at Caracas, or any depositary, of the sums accruing from the 30 per cent, shall deliver into the hands of the duly authorized representatives of the Government of the French Republic, and on the latter's receipt, such share as France is entitled to in the said funds, at such times as may be determined for the apportionment of the same;

By which, the said depositary shall be duly and regularly discharged;

(3) As regards the costs of this arbitration (according to Article V of the protocols of May 7, 1903),



To charge Germany, Great Britain, and Italy with the costs of this arbitration;

Et le tribunal fera justice.

LOUIS RENAULT, *Agent*.

EDOUARD CLUNET, *Counsel*.

HENRI FROMAGEOT, *Commissioned Secretary*.

APPENDIX I.

A.

FABIANI CLAIM.

According to the arbitral award of Bern, dated December 30, 1896, the Government of the United States of Venezuela were condemned to pay to Mr. Fabiani an indemnity of 4,346,656.51 bolivars, in bonds of the diplomatic debt, 3 per cent.

B.

FRENCH CLAIMS ARISING OUT OF THE INSURRECTIONARY ACTS OF 1892.

According to the provision of Article I, paragraph 3, of the Franco-Venezuelan protocol, dated February 19, 1902, and for the purpose of settling claims arising out of the insurrectionary acts of 1892, the Venezuelan Government delivered to the French Government a provisory certificate for the sum of 1,000,000 bolivars, which certificate is to be exchanged for bonds of the diplomatic debt for the same amount, three months after notification of the mode of apportionment of the said sum among the interested parties. (Provisory certificate, dated April 14, 1903.)

C.

*A list of the claims arising out of acts previous to May 23, 1899, and in satisfaction of which an indemnity has been awarded by the mixed commission instituted under the Franco-Venezuelan protocol of February 19, 1902.*

| No. | Name of the claimants.       | Awarded.         | No. | Name of the claimants.   | Awarded.         |
|-----|------------------------------|------------------|-----|--------------------------|------------------|
|     |                              | <i>Bolivars.</i> |     |                          | <i>Bolivars.</i> |
| 1   | Abraham et Quiroz .....      | 5,800.00         | 21  | Piton .....              | 228,714.64       |
| 2   | Augé .....                   | 800.09           | 22  | Dachary .....            | 5,000.00         |
| 3   | Franceschi et Cie .....      | 2,773.55         | 23  | Ligeron .....            | 6,000.00         |
| 4   | Guglielmi et Benedetti ..... | 2,500.00         | 24  | Mirlin .....             | 9,000.00         |
| 5   | Humbert .....                | 500.00           | 25  | Puyou-Mulez .....        | 51,744.50        |
| 6   | Leccia frères .....          | 3,000.00         | 26  | Siret .....              | 91,560.64        |
| 7   | Leonardi (Jean-Hyacinthe) .. | 3,000.00         | 27  | Battistini (D. M.) ..... | 50,000.00        |
| 8   | Bouvard .....                | 250,000.00       | 28  | Guasco (Anna) .....      | 6,000.00         |
| 9   | Lindhelmer .....             | 1,800.00         | 29  | Lalanne et Cie .....     | 8,000.00         |
| 10  | Maingonnat .....             | 7,000.00         | 30  | Vincenti .....           | 20,000.00        |
| 11  | Mannoni .....                | 1,700.00         | 31  | Gracia frères .....      | 1,768.00         |
| 12  | Piccioni .....               | 126,000.00       | 32  | Branger frères .....     | 2,600.00         |
| 13  | Rogé .....                   | 10,000.00        | 33  | Catala .....             | 12,801.00        |
| 14  | Roncajolo .....              | 120,000.00       | 34  | Michelangeli .....       | 20,738.00        |
| 15  | Strangs .....                | 140,000.00       | 35  | Perfetti .....           | 104,952.68       |
| 16  | Alin .....                   | 500.00           | 36  | Pradier .....            | 2,000.00         |
| 17  | Paoli .....                  | 35,000.00        | 37  | Longhi .....             | 4,000.00         |
| 18  | Semidei .....                | 11,000.00        |     |                          |                  |
| 19  | Decauville .....             | 41,400.00        |     |                          |                  |
| 20  | Fromentin .....              | 50,000.00        |     | Total .....              | 1,487,051.01     |

## D.

*A list of the claims arising out of acts previous to May 23, 1899, and which after being submitted to the mixed commission instituted under the Franco-Venezuelan protocol of February 19, 1902 (Art. II, Par. 1), are now referred to the umpire.*

| No. | Name of claimants.                     | Demanded.        | No. | Name of claimants.                                      | Demanded.        |
|-----|--|------------------|-----|---|------------------|
|     |  | <i>Bolivars.</i> |     |   | <i>Bolivars.</i> |
| 1   | Compagnie générale de l'Orénoque.....  | 7,616,068.62     | 6   | Fabiani.....  | 9,509,728.80     |
| 2   | Pieri.....                             | 4,010,400.00     | 7   | Masciani.....   | 801,784.98       |
| 3   | Société des bitumes de l'Orénoque..... | 176,080.10       | 8   | Compagnie française de chemins de fer vénézuéliens..... | 18,488,000.00    |
| 4   | Maninat.....                           | 2,000,000.00     |     | Total.....  | 42,897,091.98    |
| 5   | Brun.....                              | 500,000.00       |     |   |                  |

*NOTE.—Award to follow.*

## APPENDIX II.

*A list of the indemnities awarded (June 1 to September 12, 1903) by the mixed commission instituted under the Franco-Venezuelan protocol of February 27, 1903.*

|    |  |           |    |  |           |
|----|--|-----------|----|--|-----------|
| 1  | Abadie et Anglade.....                             | 25,000.00 | 44 | Bi   | 18,200.00 |
| 2  | Abbati (Philippe).....                             | 1,533.44  | 45 | Bi   | 1,000.00  |
| 3  | Abbati (Philippe).....                             | 4,739.60  | 46 | Bi   | 648.00    |
| 4  | Abd el Kader ben Amed et Merouade ben el Hadj..... | 600.00    | 47 | Bi   | 7,000.00  |
| 5  | Abraham et Quiroz.....                             | 1,675.00  | 48 | Bi   | 8,000.00  |
| 6  | Abraham (Elias).....                               | 512.00    | 49 | Bi   | 8,686.00  |
| 7  | Abraham (Julien).....                              | 12,000.00 | 50 | Bi   | 50,000.00 |
| 8  | Acquatella (Joseph).....                           | 4,582.00  | 51 | Bi   | 1,983.75  |
| 9  | Agostini (Jean).....                               | 7,500.00  | 52 | Bi   | 6,000.00  |
| 10 | Agostini (Jean).....                               | 18,716.00 | 53 | Bi   | 1,620.00  |
| 11 | Aid Zouain.....                                    | 1,048.00  | 54 | Bi   | 400.00    |
| 12 | Albertucci (Mathieu).....                          | 8,000.00  | 55 | Bi   | 7,000.00  |
| 13 | Aldalah (Antonie).....                             | 2,500.00  | 56 | Bi   | 2,880.00  |
| 14 | Alin (Eustache).....                               | 600.00    | 57 | Bi   | 4,817.00  |
| 15 | Angeli (Marc).....                                 | 86,000.00 | 58 | Bi   | 160.00    |
| 16 | Antonetti (Barthélemy).....                        | 2,000.00  | 59 | Bi   | 4,490.00  |
| 17 | Antoni (Jules).....                                | 2,100.00  | 60 | Bi   | 7,808.00  |
| 18 | Antoni (Michel).....                               | 475.00    | 61 | Bi   | 1,129.00  |
| 19 | Antoni (Michel).....                               | 9,000.00  | 62 | Bi   | 15,000.00 |
| 20 | Antonini (Toussaint).....                          | 8,400.00  | 63 | Bi   | 1,500.00  |
| 21 | Antonorsi (Jean).....                              | 7,500.00  | 64 | Bi   | 8,800.00  |
| 22 | Anziani (Pascal).....                              | 2,670.50  | 65 | Chapon et Cie.....                           | 6,000.00  |
| 23 | Aquilque (Philippe).....                           | 2,000.00  | 66 | Chistoni (Napoléon).....                     | 20,000.00 |
| 24 | Augé (Jacques).....                                | 2,000.00  | 67 | Chersala (Mme. veuve).....                   | 12,518.00 |
| 25 | Augé (Jacques).....                                | 8,000.00  | 68 | Clavatti (Ours-Jules).....                   |           |
| 26 | Badul (Jean et Elias).....                         | 10,000.00 | 69 | Colonie française de l'Etat Gumana.....      | 1,484.00  |
| 27 | Bahri (alias Bajares Elias).....                   | 10,980.00 | 70 | Compagnie des caoutchoucs de l'Orénoque..... | 4,269.88  |
| 28 | Bajares (Julien).....                              | 5,000.00  | 71 | Croce (Ernest).....                          | 8,600.00  |
| 29 | Battaglini (B.) et Anziani (P. J.).....            | 6,436.60  | 72 | Dupuy (Gustave).....                         | 8,000.00  |
| 30 | Battestini (Pierre Ignace).....                    | 10,791.12 | 73 | Duval (Eugène).....                          | 17,000.00 |
| 31 | Battestini (Pierre Ignace).....                    | 40,000.00 | 74 | Dachary (Pierre).....                        | 25,000.00 |
| 32 | Battistini (Silvestre).....                        | 5,000.00  | 75 | Dager (Joseph).....                          | 5,500.00  |
| 33 | Battistini (Dominique Marie).....                  | 40,000.00 | 76 | Dager Cura (Jean).....                       | 2,000.00  |
| 34 | Benedetti (Jean François).....                     | 7,877.58  | 77 | Dalla Costa (Jean).....                      | 10,000.00 |
| 35 | Bonnon (Joseph Albert).....                        | 5,000.00  | 78 | Dayen et Lanado.....                         | 15,000.00 |
| 36 | Benedetti Bodino et Cie.....                       | 1,500.00  | 79 | Doursi (Abraham).....                        | 200.00    |
| 37 | Benedetti (Louis).....                             | 15,000.00 | 80 | Eliès (Isidore-Antoine).....                 | 1,920.00  |
| 38 | Benigni (Martin).....                              | 1,080.00  | 81 | Felce (Jules-François et Jean-Baptiste)..... | 75,300.00 |
| 39 | Benvenuti (André).....                             | 800.00    | 82 | Fericelli (Constantin).....                  | 884.00    |
| 40 | Bertoncini (Louis).....                            | 12,000.00 | 83 | Fericelli (Pierre).....                      | 10,000.00 |
| 41 | Bertucci (François).....                           | 4,273.00  | 84 | Figarella (Blas Hyacinthe).....              | 7,180.00  |
| 42 | Bertucci (Jean).....                               | 10,940.00 | 85 | Figarella (Jean-Dominique).....              | 6,771.00  |
| 43 | Bianchi (Jérôme).....                              | 4,000.00  |    |  |           |

*A list of the indemnities awarded, etc.—Continued.*

|     |                                   |            |     |                               |            |
|-----|-----------------------------------|------------|-----|-------------------------------|------------|
| 86  | Forado (Emile) .....              | 428.00     | 161 | Moser (Léon) .....            | 700.00     |
| 87  | Fornelli (Louis-Ange) .....       | 22,006.00  | 162 | Murati (Philippe-Antoine) ..  | 3,144.00   |
| 88  | Fournier (Joseph) .....           | 8,600.00   | 163 | Muziotti (Pierre-Marie) ..... | 15,000.00  |
| 89  | Franceschi et Cie .....           | 7,049.00   | 164 | Nays (Mme Victorine) .....    | 5,000.00   |
| 90  | Franceschi et Cie .....           | 13,829.00  | 165 | Naquet (Albert) .....         | 600.00     |
| 91  | Franceschi et Cie .....           | 11,271.00  | 166 | Nardiso (Georges) .....       | 8,000.00   |
| 92  | Franceschi (Ange) .....           | 15,000.00  | 167 | Olive (Grégoire) .....        | 1,000.00   |
| 93  | Franceschi (Antoine) .....        | 78,000.00  | 168 | Olivieri frères .....         | 1,815.00   |
| 94  | Franceschi (Etienne) .....        | 10,000.00  | 169 | Orsini (André) .....          | 300.00     |
| 95  | Franceschi (François) .....       | 20,000.00  | 170 | Orsini (Louis) .....          | 4,400.00   |
| 96  | Franceschi (Joseph) .....         | 7,600.00   | 171 | Orsini frères .....           | 320.00     |
| 97  | Franchi (Pierre) .....            | 200.00     | 172 | Palazzi père et fils .....    | 87,897.75  |
| 98  | Frustuck (Joseph) .....           | 5,000.00   | 173 | Paneval (Joseph) .....        | 600.00     |
| 99  | Frustuck (Joseph) .....           | 6,400.00   | 174 | P .....                       | 28,800.00  |
| 100 | Ganen frères .....                | 4,000.00   | 175 | P .....                       | 5,000.00   |
| 101 | Giacomoni frères .....            | 15,000.00  | 176 | P .....                       | 15,227.00  |
| 102 | Gigault (Eugène) .....            | 5,000.00   | 177 | P .....                       | 18,622.00  |
| 103 | Giorgetti (François) .....        | 120,000.00 | 178 | P .....                       | 1,000.00   |
| 104 | Goubat (Jean-Marie) .....         | 2,200.00   | 179 | P .....                       |            |
| 105 | Gracia (Gabriel) .....            | 5,097.00   |     |                               | 725.00     |
| 106 | Grisol (Mayen) .....              | 2,000.00   | 180 | P .....                       | 8,000.00   |
| 107 | Guerini (Paul) .....              | 2,600.00   | 181 | P .....                       | 500.00     |
| 108 | Helo (Abelard) .....              | 4,000.00   | 182 | P .....                       | 600.00     |
| 109 | Herbet (Fernand) .....            | 75,000.00  | 183 | P .....                       | 12,072.00  |
| 110 | Hocquet (Paul-Desiré) .....       | 5,477.28   | 184 | P .....                       | 12,912.00  |
| 111 | Ineco et Abren .....              | 50.00      | 185 | P .....                       | 15,002.00  |
| 112 | Iablier (Antoine) .....           | 2,000.00   | 186 | P .....                       | 200.00     |
| 113 | Jamet (Eugène) .....              | 2,200.00   | 187 | P .....                       | 2,500.00   |
| 114 | Joucla et Cie .....               | 6,841.70   | 188 | P .....                       | 7,545.12   |
| 115 | Laffont (Pierre) .....            | 1,000.00   | 189 | P .....                       | 10,000.00  |
| 116 | Leduc, St-Ive, Fischer et Cie ..  | 29,484.00  | 190 | P .....                       | 1,297.24   |
| 117 | Lenfant (Benjamin-Henri) .....    | 2,200.00   | 191 | P .....                       | 300.00     |
| 118 | Leonardi (François) .....         | 4,000.00   | 192 | P .....                       | 420.00     |
| 119 | Leonardi (François) .....         | 10,000.00  | 193 | P .....                       | 2,500.00   |
| 120 | Leonardi (Jean) .....             | 4,480.00   | 194 | P .....                       | 2,825.00   |
| 121 | Leonardi (Toussaint) .....        | 1,523.00   | 195 | P .....                       | 9,000.00   |
| 122 | Leonardi (Toussaint) .....        | 2,500.00   | 196 | R .....                       | 28,784.48  |
| 123 | Leonardi (Toussaint) .....        | 10,000.00  | 197 | Renucci (Antoine et Do-       |            |
| 124 | Liccioni (Antoine) .....          | 26,540.00  |     | minique) .....                | 2,000.00   |
| 125 | Liccioni (Jules) .....            | 11,800.00  | 198 | Rescanières (Alexis) .....    | 11,334.00  |
| 126 | Ligeron (Henri) .....             | 29,900.00  | 199 | Ristorcelli (Antoine) .....   | 2,897.00   |
| 127 | Ligeron (Henri) .....             | 1,010.22   | 200 | Roffé (Moses) .....           | 66,211.25  |
| 128 | Lindheimer (Edouard) .....        | 11,111.78  | 201 | Rosain (Amin L.) dit Ga-      |            |
| 129 | Lorenzi (Joseph) .....            | 2,300.00   |     | saine .....                   | 4,000.00   |
| 130 | Lucca et Cie .....                | 4,792.96   | 202 | Rutty (Ange François) .....   | 200.00     |
| 131 | Lucca et Cie .....                | 6,745.00   | 203 | Saint-Pasteur (Julien) .....  | 17,000.00  |
| 132 | Lucchesi (F.) et Corsi (A.) ..... | 4,000.00   | 204 | Salas (Philippe) .....        | 600.00     |
| 133 | Lucchesi (Mme. veuve Roch) ..     | 1,400.00   | 205 | Salvatori (Joseph) .....      | 1,000.00   |
| 134 | Luciani (Dominique) .....         | 40,000.00  | 206 | Santelli (Antonin) .....      | 225.00     |
| 135 | Luciani (Pierre-Ange) .....       | 2,000.00   | 207 | Santelli (François) .....     | 12,400.00  |
| 136 | Luz (Elias) .....                 | 15,000.00  | 208 | Santini (Pierre) .....        | 20,000.00  |
| 137 | Marengo (François) .....          | 2,848.00   | 209 | Santoni (Paul) .....          | 40,000.00  |
| 138 | Marengo (Jacques) .....           | 2,083.00   | 210 | Sarrasin (Léon, André) .....  | 5,515.00   |
| 139 | Mariani (Antoine) .....           | 45,000.00  | 211 | Saulny (Paul) .....           | 20,000.00  |
| 140 | Mariani (Dominique) .....         | 1,978.00   | 212 | Savelli (Dominique) .....     | 2,857.00   |
| 141 | Marregot Jonanet (Victor-         |            | 213 | Savery (Joseph) .....         | 4,045.00   |
|     | Dominique) .....                  | 5,400.00   | 214 | Savignac (Jean) .....         | 2,200.00   |
| 142 | Marregot Jonanet (Paul-           |            | 215 | Scotti (Jean Laurent) .....   | 1,000.00   |
|     | Auguste) .....                    | 5,000.00   | 216 | Segurani (Pierre) .....       | 172.00     |
| 143 | Massabie (Alfred) .....           | 4,120.00   | 217 | Semidei frères .....          | 111,214.79 |
| 144 | Massiani (Thomas) et fils .....   | 19,900.00  | 218 | Seelm (Abut) .....            | 3,000.00   |
| 145 | Mattel (Joseph-Marie) .....       | 1,500.00   | 219 | Signanini (Dominique) .....   | 664.00     |
| 146 | Mattel (Michel) .....             | 8,000.00   | 220 | Soucre (Simon) .....          | 15,000.00  |
| 147 | Medori (Pascal) .....             | 25,000.00  | 221 | Tajan (Oléstin) .....         | 2,500.00   |
| 148 | Melik (Manuel) .....              | 5,910.00   | 222 | Tarbès et Cie .....           | 19,720.00  |
| 149 | Melik (Natalio et Antoine) .....  | 10,000.00  | 223 | Tarbès (Laurent) .....        | 2,000.00   |
| 150 | Melik (Matallo) .....             | 10,000.00  | 224 | Taux (Jean) .....             | 4,154.00   |
| 151 | Mestaje (Jacob) .....             | 9,500.00   | 225 | Tomas (Barthélemy) et Cie ..  | 20,000.00  |
| 152 | Michelangeli (Fabien) .....       | 14,952.00  | 226 | Tomas (Barthélemy) et Cie ..  | 725.00     |
| 153 | Michelangeli (Fabien) .....       | 10,000.00  | 227 | Vincentelli et Cie .....      | 100,000.00 |
| 154 | Milani (Jules-Mathieu) .....      | 15,000.00  | 228 | Vincentelli (Louis) .....     | 20,000.00  |
| 155 | Mirlin (Emile) .....              | 1,125.00   | 229 | Ventura de Alruth dit         |            |
| 156 | Mirlin (Emile) .....              | 2,500.00   |     | Aeroet .....                  | 5,000.00   |
| 157 | Monna (Michel-Élie) .....         | 8,800.00   | 230 | Venturini (Pierre) .....      | 25,000.00  |
| 158 | Monsif (Lalomon) .....            | 16,000.00  | 231 | Venturini (Toussaint) .....   | 2,590.00   |
|     |                                   |            | 232 | Yunes (Joseph-Antoine) .....  | 2,200.00   |

## APPENDIX III.

## POSTAL DUES.

On account of the mail services from January 1, 1896, till December 31, 1902, the Venezuelan Government are indebted for 267,457.57 francs to the postal service of the French Republic in pursuance of the provisions of the postal international convention signed at Washington on the 15th of June 1897. (Article IV, par. 3, 5, 6, and 7.)

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[French text.]

Nous croyons avoir abordé et discuté dans notre mémoire presque tous les arguments présentés dans les mémoires des puissances bloquantes. Nous nous permettons donc de renvoyer au mémoire pour l'ensemble de l'argumentation et nous n'insisterons ici que sur quelques points qui méritent un nouvel examen.

Il faut noter tout d'abord une divergence essentielle, quant au point de départ du raisonnement des puissances bloquantes et de notre propre raisonnement.

Les alliés auraient été en possession d'un avantage que les autres puissances seraient venues ensuite leur disputer. Ils auraient eu un gage, une hypothèque qu'ils pourraient légitimement opposer aux puissances n'ayant pas les mêmes garanties ou ne les ayant eues que postérieurement. Et on invoque, à l'appui des textes du droit romain sur la priorité de mise en possession ou la priorité de constitution d'hypothèque, notamment l'adage *prior tempore potior jure*.

Ce raisonnement repose sur une erreur de fait absolue que nous avons, croyons-nous, démontrée dans notre mémoire. La situation de fait alléguée n'a jamais existé. Nous ne pensons pas que l'on puisse sérieusement argumenter de ce que les forces des puissances alliées ont saisi des navires vénézuéliens en plus ou moins grand nombre; il ne s'agit pas de se répartir la valeur de ces navires. Il s'agit des 30 pour cent des revenus des douanes de La Guaira et de Puerto Cabello, et nous affirmons très nettement, en nous appuyant sur des textes positifs, que ce gage, si on veut ainsi qualifier cette affectation, n'a jamais été possédé exclusivement par les puissances bloquantes. En ce qui touche les négociations suivies à Washington entre les représentants de l'Allemagne, de la Grande-Bretagne et de l'Italie, d'une part, le représentant du Vénézuéla, d'autre part, négociations que ont abouti aux protocoles du 13 février 1903, il y a contradiction entre la preliminary examination du Vénézuéla et les mémoires du gouvernement anglais et du gouvernement allemand. Y a-t-il eu un moment où l'on peut dire que l'affectation des 30 pour

cent des puissances bloquantes était ou paraissait acceptée par M. Bowen? A l'inverse, l'intention non équivoque du Vénézuéla de faire un règlement applicable à toutes les puissances créancières n'a-t-elle pas, ou n't-elle pas paru être, à un moment, acceptée par les puissances bloquantes? Il ne nous appartient pas de nous prononcer. C'est un point à débattre spécialement entre les conseils des puissances bloquantes et les conseils du Vénézuéla qui sont particulièrement compétents pour faire la lumière sur ce point.

Nous tenons seulement à dire que cette question nous paraît avoir surtout un intérêt politique, historique, mais non pas un intérêt juridique et actuel. Ce qui résulte nettement de la correspondance diplomatique, qu'on l'interprète dans un sens ou dans l'autre, au point de vue indiqué plus haut, c'est qu'à aucun moment il n'y a eu un accord exprès, formel, sur cette question capitale de l'affectation exclusive ou de l'affectation générale des 30 pour cent. Dès qu'on a précisé, le désaccord absolu s'est manifesté. On a essayé de s'entendre; diverses propositions ont été faites. M. Bowen aurait concédé la perception exclusive pendant un mois comme satisfaction d'amour-propre; l'Angleterre se serait contentée de 20 pour cent, s'ils avaient dû être attribués exclusivement aux bloquants. L'accord ne s'est pas fait, le Vénézuéla insistant sur l'égalité de traitement des puissances créancières sans distinction. Alors ont été signés les protocoles du 13 février 1903, qui sont le point de départ de la procédure suivie devant le tribunal arbitral. L'article 5 du protocole anglo-vénézuélien commence ainsi :

The Venezuelan Government being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in Article III and similar claims preferred by other Governments, undertake to assign to the British Government \* \* \*

Une affectation dans les mêmes termes a été faite au profit des deux autres puissances bloquantes comme aussi des puissances pacifiques. Voir, par exemple, l'article 5 du protocole franco-vénézuélien (annexé au mémoire). Les protocoles signés dans ces conditions, qui vont du 13 février au 2 avril 1903, forment évidemment un ensemble; l'affectation du Vénézuéla est faite dans les mêmes termes et doit avoir le même effet. Toutes les puissances sont sur le même pied, non pas comme l'aurait voulu le Vénézuéla, en ce sens que, dès à présent, le principe de la répartition égale et proportionnelle serait accepté, mais en ce sens que toutes les puissances se soumettent à la décision que rendra le tribunal arbitral. C'est ce que dit l'alinéa 2 du même article 5 des protocoles du 13 février :

Any question as to the distribution of the customs revenues so to be assigned, and as to the rights of Great Britain, Germany, and Italy to a separate settlement of their claims, shall be determined, in default of arrangement, by the tribunal at The Hague, to which any other power interested may appeal.

Ces derniers mots montrent bien que c'est un règlement d'ensemble qui est fait, qu'il n'y a rien spécial aux puissances bloquantes. (Voir aussi article 5, alinéa 3, du protocole franco-vénézuélien du 27 février 1903.)

Donc, nous maintenons pleinement les affirmations du mémoire. Il y a eu de la part du débiteur affectation d'une partie de ses ressources au profit de tous ses créanciers, sauf au tribunal arbitral à décider comment se fera la répartition entre eux. Il n'y a pas à argumenter d'une possession qui n'existe pas, d'une priorité de temps qui n'existe pas davantage. Le mémoire italien paraît indiquer le tribunal pourrait tenir compte de l'ordre des dates auxquelles ont été signés les divers protocoles. Les puissances bloquantes, ayant des protocoles du 13 février, viendraient naturellement avant les Etats-Unis qui n'ont signé que le 17 février et ainsi de suite. Nous ne pensons pas que ce système soit présenté devant le tribunal et nous ne pensons pas qu'il y ait lieu d'insister sur sa réfutation. Il est trop évidemment contraire au texte et à l'esprit des stipulations intervenues. Il résulte bien nettement de ces stipulations que de deux choses l'une: ou, comme nous le soutenons, il y aura une répartition égale entre toutes les puissances sans distinction; ou, si nous succombons, les créances des trois puissances bloquantes seront d'abord intégralement payées, et, ce paiement fait, les 30 pour cent seront répartis proportionnellement entre les autres puissances. Nous ne supposons pas que les Etats-Unis aient l'intention de soutenir que, parce que leur protocole a été signé le 17 février, leurs créances devront être payées avant celles du Mexique, de la France, etc. Du reste, quand on applique la règle *prior tempore potior jure*, il faut l'appliquer jusqu'au bout. Ce n'est pas seulement une question de jour, mais aussi une question d'heure. Les puissances bloquantes n'ont pas signé un protocole, mais trois protocoles distincts; les signatures ont-elles été échangées à la même heure? Nous l'ignorons. On a aussi argumenté des mesures mêmes de force, de la saisie des navires vénénézuéliens comme constituant une sorte de prise de possession. A ce compte, est-il sûr que l'Italie serait sur le même pied que ses alliés puisqu'elle ne s'est pas unie à eux dès le commencement?

Nous lisons dans le mémoire allemand:

As soon as the Venezuelan representative explained that the 30 per cent were to be distributed equally among all the creditors the blockading powers entered a protest. This protest is preserved intact in the protocol of the 13th February, 1903, and must stand entirely unaffected by any agreements which the Venezuelan Government may have entered into with other creditor powers. For the Venezuelan Government was not justified in making any arrangements with other powers by which the engagement previously entered into with the blockading powers would be impaired.

Ce passage ne saurait être admis comme exact. On ne peut dire, en effet, que la situation des puissances bloquantes qui n'acceptaient pas



l'explication de M. Bowen n'ait pas été affectée par la signature des protocoles du 13 février 1903. Tant que cette signature n'était pas donnée, les puissances bloquantes pouvaient maintenir leur dissentiment pour des raisons purement politiques ou, pour mieux dire, sans donner de motifs. L'accord n'intervenant pas, le blocus n'était pas levé et c'était le moyen de pression qu'elles avaient contre le Vénézuéla. Les protocoles signés, la situation a changé du tout au tout, quoiqu'en dise le mémoire allemand. Les puissances bloquantes maintiennent bien qu'elles doivent être préférées, mais comme elles consentent à ce que la question de priorité soit soumise à un tribunal arbitral, ce sont des raisons juridiques qu'elles doivent donner à l'appui de leur prétention; leur action coercitive ne peut plus avoir l'effet qu'elle avait naturellement quand elles discutaient avec le Vénézuéla seul.

D'autre part, le mémoire allemand paraît présenter comme incorrects les divers arrangements conclus par le gouvernement vénézuélien avec les autres puissances. Mais ces arrangements étaient virtuellement prévus par les protocoles du 13 février eux-mêmes, puisque ces protocoles visaient un règlement à faire par un tribunal d'arbitrage entre toutes les puissances créancières. Voir aussi le No. 2 de la conclusion du mémoire anglais qui, si on le prend à la lettre, rendrait presque inexplicable notre présence à La Haye :

The other creditor powers took no part in the controversy between the blockading powers and the United States of Venezuela, and can not claim as a matter of right to take any part in the settlement of that controversy.

A quel titre sont donc à La Haye les puissances qui n'ont pas participé au blocus? Est-ce que ce n'est pas à un titre juridique, en vertu d'un droit qu'elles tiennent des traités internationaux?

Le mémoire anglais s'étonne de voir des puissances neutres intervenir, la guerre une fois terminée, pour prétendre partager avec le vainqueur les fruits de la victoire. Il faut citer textuellement :

The contention on behalf of the other creditor powers, if it be put forward as a matter of legal right, must come to this: that, at conclusion of any war, a neutral is entitled to interpose between the successful and the unsuccessful belligerent, and to demand, as of right, to share in the fruits of the victory on the ground that he, too, had claims against the vanquished, although he took no steps to enforce those claims and had not protested against the action taken by the other belligerent to enforce his claims. Such a proposition can, it is certain, find no precedent in the history of nations.

Ce raisonnement repose sur une confusion; il rapproche deux situations qui ne sont pas identiques.

Sans doute quand, après une guerre, les conséquences de la défaite ont été réglées entre le vainqueur et la vaincu, à moins que, par ce règlement, des traités ou engagements positifs que peuvent invoquer des Etats tiers aient été méconnus, les puissances neutres ne peuvent intervenir et contester le règlement que pour des raisons politiques,

non juridiques. Ainsi, dans le cas où les puissances bloquantes se seraient fait attribuer définitivement tous les revenus des douanes des deux ports, elles auraient provoqué une objection juridique, parce que cette attribution aurait été contraire à un droit positif antérieurement consenti au profit des porteurs des titres de la dette diplomatique. Mais, si elles s'étaient fait accorder purement et simplement 30 pour cent des recettes des douanes des deux ports, les autres puissances auraient dû juridiquement accepter ce résultat des mesures coercitives pratiquées contre leur débiteur. Elles ont bien accepté le paiement comptant de sommes importantes que le Vénézuéla a dû faire aux puissances bloquantes. Ce paiement a nui aux puissances pacifiques qui ont eu, par la diminution des ressources le leur débiteur, moins de facilités pour obtenir le paiement de créances au moins aussi incontestables que celles qui étaient ainsi acquittées sans que le créancier eût aucune justification à faire et sans que le débiteur pût exercer aucun contrôle. Voilà le résultat naturel d'un arrangement intervenu entre le vainqueur et le vaincu.

En ce qui touche les 30 pour cent dont la réparation constitue le litige actuel, la situation est tout autre. Il n'y a pas eu entre les puissances bloquantes et le Vénézuéla un règlement qui aurait été en faveur des premières et que les puissances pacifiques voudraient faire modifier à leur profit. Nous ne saurions trop le répéter, rien de semblable ne s'est passé. Aucune concession définitive n'a été faite par le Vénézuéla; il n'y a eu qu'une affectation subordonnée à une condition nettement déterminée. Dans le règlement même qui termine les hostilités, qui détermine les conditions de la levée du blocus, l'intervention des autres puissances créancières est expressément prévue, puisqu'il est dit que la question du traitement préférentiel sera soumise au tribunal de La Haye auquel peut recourir toute autre puissance intéressée. Il y a lieu de s'étonner qu'après cela on présente cette intervention comme une sorte d'intrusion de leur part. Cette intervention a pu être acceptée avec plus ou moins de bonne grâce, elle a été acceptée et consacrée par les protocoles.

On nous dit de nous rappeler dans quelle situation étaient respectivement les puissances alliées et le Vénézuéla avant la levée du blocus, alors que les autres puissances ne protestaient pas et s'abstenaient de prendre part aux opérations militaires. Les alliés were in a position to continue the blockade until their separate demands were complied with, while the other creditor powers were not then in a position to exert any such pression on Venezuela.

Qu'est-ce que cela prouve? Simplement que les alliés n'ont pas tiré de leur victoire toutes les conséquences possibles, qu'ils n'ont pas poussé leurs avantages jusqu'au bout. Nous n'avons pas à rechercher les motifs, peut-être complexes, de leur conduite qui les regardent seuls. Nous n'avons qu'à constater cette conduite et à faire produire

à l'accord intervenu ses résultats naturels et logiques. En définitive, le Vénézuéla, qui a cédé sur tant de points importants, n'a pas cédé sur celui-là. Il a maintenu sa volonté de traiter toutes les puissances créancières sur le même pied d'égalité. Cette attitude aurait-elle continué longtemps encore si le blocus avait persisté? Nous n'avons pas à le rechercher. Mais enfin les puissances bloquantes ont cédé. Elles se sont contentées éventuellement du traitement égal dans le cas où il serait admis par le tribunal arbitral devant lequel, nous ne craignons pas de le répéter, toutes les puissances comparaissent dans une situation de fait absolument égale; c'est au tribunal à apprécier les diverses considérations juridiques qui lui sont soumises. C'est une question de droit qu'il a pour mission de trancher, ce n'est pas une question politique.

Aussi devons-nous combattre ici spécialement deux paragraphes des conclusions du mémoire anglais: il y est dit que la prétention des puissances pacifiques doit être rejetée, because

I. The Venezuelan Government expressly accepted the condition insisted on from first to last by His Majesty's Government that adequate security should be provided for the satisfaction of the claims of the blockading powers. The reference to this court was made on the basis of that condition, and to that condition, it is submitted, the court should give effect.

On peut rapprocher ici le passage suivant du mémoire allemand envisageant le cas où toutes les puissances seraient admises à participer à la répartition des 30 pour cent. Nous ne relevons pas ce qu'il peut y avoir d'exagéré dans les chiffres cités à raison de ce que toutes les créances contre le Vénézuéla ne seront pas aptes à venir sur les 30 pour cent. Nous nous attachons seulement au raisonnement. Après avoir indiqué que, si toutes les réclamations étaient admises, la part afférente à chacune serait minime, le mémoire continue:

But even if a considerable part of the claims should not be admitted, the remaining amount would be so large that after all the amortisation of the capital would not be effected within a reasonable time. It is therefore apparent that such an arrangement would not constitute a satisfaction of the claims of the blockading powers, as promised by President Castro.

On prétend de cette façon donner au tribunal arbitral une mission qui n'est pas la sienne et on la limite dans un sens conforme aux intérêts des puissances bloquantes, mais contraire aux textes mêmes en vertu desquels siège le tribunal. Celui-ci, en effet, est chargé de déterminer si un traitement préférentiel doit ou non être reconnu aux puissances bloquantes et, puisque c'est un tribunal, il se décidera d'après les principes du droit et de l'équité. Il n'a nullement à rechercher de quelle façon les puissances bloquantes auront la satisfaction sur laquelle elles comptaient, quand elles ont recouru aux mesures coercitives. Quoiqu'en disent les conclusions anglaises, il n'y a rien de cela dans les protocoles, pas plus dans ceux du 7 mai 1903 que dans ceux du 13

février. Lors de la levée du blocus, c'était aux puissances à tenir compte des éventualités, à voir à quoi elles s'exposaient, en s'en rapportant à une décision arbitrale, à quel dividende annuel pourraient être réduites leurs réclamations, si leur prétention au traitement préférentiel était écartée. Il peut se faire que leurs calculs aient été erronés, qu'elles reconnaissent aujourd'hui qu'elles ont eu tort de faire cette concession. Cela importe peu en droit. Le tribunal arbitral doit appliquer les protocoles, apprécier les raisons données de part et d'autre, sans avoir cette préoccupation que vise la conclusion du mémoire anglais, qu'une satisfaction suffisante (*adequate security*) doit être procurée aux puissances bloquantes. C'était à elles à être prévoyantes avant le 13 février 1903.

L'autre raison de rejeter la prétention des puissances pacifiques exprimée dans les conclusions du mémoire anglais est ainsi formulée, *because*

5. In the circumstances existing at the time of the signing of the protocols, the blockading powers were entitled to preferential and separate treatment.

Le tribunal, pour statuer, devrait donc se reporter à l'époque où ont été signés les protocoles du 13 février, apprécier la situation de fait telle qu'elle existait alors et voir si, d'après cette situation, les puissances bloquantes étaient entitled to preferential and separate treatment, ce qui, par une habile équivoque, peut signifier qu'elles étaient en état d'obtenir un traitement préférentiel, ce qui n'est guère douteux, étant donnée la disproportion des forces entre le Vénézuéla et ses adversaires. Mais peut-on poser la question de cette façon? On ne saurait l'admettre un seul instant. La Grande-Bretagne, par de telles conclusions, demande au tribunal de faire, dans l'intérêt des puissances, ce qu'il n'a pas convenu à celles-ci de faire le 13 février 1903. Il s'agirait de leur restituer les avantages de fait qu'elles avaient alors et dont elles n'ont pas tiré, d'après leur appréciation d'aujourd'hui, tout le parti possible. Les puissances bloquantes auraient donc eu, en ne se montrant pas intransigeantes pour les 30 pour cent, le bénéfice d'une solution plus prompte, la situation créée par le blocus ne pesant pas seulement au Vénézuéla, et aujourd'hui, faisant un retour en arrière, elles demandent au tribunal de leur accorder l'avantage qu'elles auraient pu avoir en ne cédant pas au Vénézuéla et en maintenant le blocus. Il n'est pas besoin d'insister pour montrer qu'il y a là quelque chose de contradictoire et d'inadmissible. Le tribunal doit dire le droit; il n'a pas à rechercher ce qui aurait pu être fait, mais à constater ce qui a été fait. Sur ce point, il n'y a pas de doute. Les bloquants, se contentant des sacrifices immédiats consentis par le Vénézuéla, non négligeables du reste, ont accepté, pour les 30 pour cent, de courir les risques d'un litige. Il ne saurait être question de les remettre dans la situation où ils étaient.

Les mémoires des puissances bloquantes invoquent les risques courus, les dépenses supportées comme justifiant le droit de préférence réclamé. Le mémoire allemand y insiste particulièrement; le mémoire italien passe assez rapidement; le mémoire anglais se tient dans la sphère des principes: *Whether that trouble and expenses be greater or less matters not; for the principle, if it be a principle, must apply equally in cases where blood and treasure have been sacrificed, ships sunk and armies annihilated, as in cases where hostilities have been comparatively innocuous.* Est-il juste que les puissances neutres qui n'ont pas fait ces sacrifices et couru ces risques aient les mêmes avantages?

Nous répondons d'abord qu'il n'est pas exact que les puissances pacifiques aient les mêmes avantages que les puissances bloquantes. Celles-ci ont, en dehors des pour cent, tiré des profits sérieux de leur intervention. Nous en avons déjà parlé dans le mémoire, mais nous devons compléter ce que nous avons dit à ce sujet. Nous avons indiqué seulement les sommes effectivement payées<sup>a</sup> et nous pouvons remarquer en passant que si l'Allemagne, d'après son mémoire, a été particulièrement sensible aux risques des opérations, c'est elle aussi qui a touché la plus forte somme, soit 1,718,815 bolívares; il y a eu compensation. Mais ce paiement effectif n'est pas le seul avantage retiré par les puissances bloquantes. Si nous prenons le protocole italo-vénézuélien, nous trouvons l'article 3 ainsi conçu :

The Venezuelan Government accept, recognize, and will pay the amount of the Italian claims of the first rank derived from the Revolution 1898-1900, in the sum of 2,810,255 bolívares.

It is expressly agreed that the payment of the whole of the above Italian claims of the first rank will be made without being the same claims or the same sums submitted to the mixed commission and without any revision or objection.

Voilà donc encore des réclamations pour une somme importante qui sont admises sans aucune espèce d'examen ou de contrôle, et on sait que les réclamations motivées par des faits de ce genre donnent ordinairement lieu, devant la commission arbitrale, à beaucoup de difficultés quant à l'existence, quant au montant du préjudice, même quant au principe de la responsabilité. Toutes ces difficultés sont écartées.

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<sup>a</sup> Nous avons dit que les alliés, en réclamant ce droit de préférence pour certaines de leurs créances, reconnaissaient implicitement que leurs autres créances devaient être soumises au droit commun. Nous trouvons un peu paradoxale cette affirmation du mémoire italien (p. 17) que, le gouvernement italien ayant déjà touché 5,500 livres et M. Bowen ayant reconnu le droit au paiement d'une somme de 2,810,255.95 bolívares, it was therefore unjust and unfair to refuse a privileged payment for the whole amount of the claims. En matière de privilège, on ne raisonne pas ordinairement de la sorte.



Pour d'autres réclamations visées par l'article 4 du même protocole, une commission mixte doit être saisie, mais le rôle de cette commission est limité, le gouvernement vénézuélien admettant le principe de sa responsabilité. Il y a encore là un avantage appréciable.

Des stipulations analogues se trouvent dans les protocoles avec l'Allemagne et la Grande-Bretagne.

Quant aux frais des opérations, le mémoire allemand dit les puissances bloquantes sont autorisées par le droit international à exiger du Vénézuéla le payment de leurs dépenses, d'après le principe qui oblige un débiteur à supporter les frais que le créancier a dû faire pour recouvrer sa dette. Ce n'est pas à discuter, mais, en fait, les puissances bloquantes n'ont pas parlé des frais, lors de la levée du blocus, et une tentative faite plus tard par elles pour attribuer au tribunal le droit de leur accorder une compensation de ce chef a échoué. Cette compensation que le tribunal ne peut ainsi allouer directement, peut-il l'allouer indirectement en accordant le traitement de préférence réclamé? C'est ce que semble indiquer le mémoire allemand; les puissances bloquantes auraient renoncé à réclamer les frais du Vénézuéla, sous la condition tacite qu'elles seraient indemnisées par une satisfaction réelle. Ce n'est pas admissible. Ce n'est pas aux puissances pacifiques à faire les frais de la prétendue générosité à l'égard du Vénézuéla et il peut n'y avoir aucune proportion entre les dépenses des opérations et l'avantage procuré par le traitement préférentiel.

Les bloquants invoquent divers arguments d'analogie tirés du droit privé sur lesquels nous passerons rapidement, parce que nous les avons réfutés par avance.

On nous fait remarquer d'abord que le Vénézuéla n'est pas un insolvable, que ce n'est pas l'ensemble, mais seulement une portion de ses biens qu'il s'agit de répartir. La situation serait analogue à celle d'un créancier qui, en exécution d'une sentence, a saisi un bien particulier de son débiteur et qui, sur ce bien, doit être payé avant les autres créanciers. Mais c'est résoudre la question par la question. Nous avons trop souvent expliqué qu'il n'y a eu à aucun moment de gage exclusif au profit des bloquants pour que nous insistions encore. Le mémoire ajoute: *Nor must it be forgotten that, at the time of the signing of the protocols, they did hold actual security in the ships of the Venezuelan navy.* Nous ne voyons pas le lien qui existe entre le fait de la saisie de navires vénézuéliens et la répartition des 30 pour cent. Cela rentre dans l'ordre des considérations dont nous avons parlé précédemment; les puissances bloquantes avaient les moyens de faire cesser la résistance du Vénézuéla, mais elles n'en ont pas usé.

Le mémoire anglais invoque ensuite le principe d'après lequel le créancier qui a fait des frais pour la conservation de la chose du débiteur commun est privilégié, il cite à l'appui des textes du droit



romain et ajoute qu'un principe semblable est reconnu dans la jurisprudence de toutes les nations civilisées. Nous n'avons garde de contester un pareil principe que nous avons rappelé nous-mêmes, mais nous avons indiqué en même temps quelle en était la signification incontestée, telle qu'elle résulte d'ailleurs des textes mêmes invoqués. Le privilège reconnu au créancier qui a fait des dépenses pour la conservation de la chose du débiteur commun, a pour objet d'assurer le recouvrement de la créance spéciale née de ces dépenses et non des créances avant une autre origine que pourrait avoir le créancier, ce qui serait vraiment absurde. Si on applique cette idée très simple à l'espèce, il en résulte que les bloquants pourraient réclamer un droit de priorité non pas pour leurs diverses réclamations, mais pour les dépenses qu'ils ont dû faire ou, due moins, pour une portion de ces dépenses, puisque, grâce à ces dépenses, ils ont obtenu des avantages qui leur sont propres. Mais on sait que les bloquants n'ont pas le droit de réclamer ces dépenses, ainsi qu'il a été expliqué plus haut.

Dans le même ordre d'idées, le mémoire anglais cite encore les cas du prêt à la grosse et du sauvetage où un privilège est accordé par le droit de toutes les nations au créancier, même postérieur en date, qui a sauvé le gage commun. La réponse est identique. Le privilège garantit les frais de sauvetage et non les diverses créances que le sauveteur pourrait avoir contre le débiteur dont la chose a été sauvée.

Les raisons alléguées par les puissances bloquantes en faveur du privilège réclamé ne sont donc pas admissibles et nous pouvons maintenir avec confiance les conclusions de notre mémoire. Nous rappelons que nous avons indiqué les principes du droit et de l'équité qui justifiaient le traitement égal pour toutes les puissances créancières. Nous rappelons également le précédent si important que nous ont fourni les événements récents de Chine et nous constatons que la pratique des nations, qui avait été invoquée par nos adversaires, ne leur a cependant fourni aucun exemple favorable à leur thèse.

Nous demandons, en conséquence, au tribunal arbitral de vouloir bien décider que tout traitement préférentiel ou séparé doit être refusé aux puissances bloquantes et que les 30 pour cent seront répartis proportionnellement entre toutes les créances auxquelles ils ont été affectés par les divers protocoles.

Le tribunal arbitral n'aura rempli qu'une partie de sa tâche s'il se borne à résoudre in abstracto la question du traitement préférentiel. Les protocoles du 7 mai lui donnent une mission plus étendue, dans le cas où cette question serait tranchée contre les puissances bloquantes :

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers (art. 1, al. 3).

Le tribunal aura donc à ordonner les mesures nécessaires pour que sa décision de principe soit pratiquement exécutée. Il convient qu'il fixe d'abord le taux des intérêts dont il devra être tenu compte aux créanciers, à raison du retard qu'ils vont subir dans le paiement de leurs créances.

Il est désirable que le tribunal décide à cet effet que chaque puissance aura à produire, dans le plus bref délai possible, si elle ne l'a déjà fait, l'état de ses créances antérieurement garanties et l'état de celles qui doivent participer à la répartition des 30 pour cent.

Nous donnons en Annexe :

1°. La liste des créances qui jouissent déjà d'un gage particulier. (Annexe I [A, B, C, D].)

2°. La liste des créances qui, ne jouissant d'aucun gage particulier, et ayant été réglées par une commission mixte conformément au protocole de Washington du 27 février 1903, doivent être comprises dans la répartition des 30 pour cent. (Annexe II.)

3°. L'état de la créance de l'administration postale contre le gouvernement vénézuélien, créance qui dérive des conventions régissant l'Union postale universelle. (Annexe III.)

### CONCLUSIONS.

Plaise au tribunal :

Attendu qu'il résulte clairement des négociations qui ont précédé les protocoles du 13 février 1903, telles qu'elles sont révélées par la correspondance diplomatique, qu'à aucun moment il n'y a eu entre le Vénézuéla et les puissances bloquantes un accord pour l'attribution à celles-ci des 30 pour cent sans condition ;

Attendu qu'il n'y a eu de la part du Vénézuéla qu'une attribution de ces 30 pour cent à toutes les puissances pour certaines catégories de réclamations et que, l'entente n'ayant pu se faire sur ce point, les parties sont convenues de soumettre la question à un tribunal arbitral ;

Attendu que, devant le tribunal, toutes les parties se présentent sur le pied de l'égalité, aucune n'ayant l'avantage de la possession ;

Attendu que le tribunal, chargé de dire le droit, doit se décider d'après des considérations juridiques et non d'après la situation de fait qui existait lors de la signature des protocoles du 13 février 1903 ; qu'il ne saurait, en effet, appartenir au tribunal de rétablir cette situation dont les puissances bloquantes ont tiré les conséquences qui leur convenaient en signant ces protocoles ;

Attendu que c'est aux puissances bloquantes à prouver l'existence du droit de priorité qu'elles réclament, ce qu'elles ne font pas ;

Attendu qu'en effet, ce traitement préférentiel ne se justifie ni par les principes du droit, ni par ceux de l'équité, ni par la pratique internationale ;

Attendu que la règle est l'égalité entre les créanciers comme entre les Etats;

Attendu que l'analogie du droit privé ne saurait être invoquée en faveur des Puissances bloquantes, puisque, si le créancier qui fait des frais pour la conservation du gage commun, jouit d'un privilège, c'est uniquement pour sa créance provenant de ces frais et non pour les autres créances qu'il peut avoir; que, d'ailleurs, d'après, les circonstances de la cause, les puissances bloquantes ne sauraient réclamer les frais de leurs opérations ni au Vénézuéla, ni aux puissances pacifiques;

Attendu que les puissances bloquantes ont tiré des avantages positifs et non insignifiants de leur intervention, soit par le paiement immédiat de certaines créances dispensées de toute vérification, soit par le règlement d'autres réclamations également soustraites à la discussion;

Attendu que les puissances bloquantes prétendent vainement que des neutres n'ont pas le droit d'intervenir entre le vainqueur et le vaincu pour priver le premier des fruits de sa victoire;

Attendu que cette intervention ne s'est pas produite après le règlement, entre le vainqueur et le vaincu, des conséquences de la défaite; qu'au contraire, elle a été prévue dans ce règlement même et qu'elle a été ainsi acceptée par les belligérants eux-mêmes;

Attendu que la principe de l'égalité a été reconnu sans difficulté lors de l'expédition de Chine de 1901; que ce précédent est d'autant plus important à relever que les puissances bloquantes y ont participé et que les puissances qui étaient intervenues militairement et qui admettaient les autres à concourir avec elles étaient manifestement en situation de faire prévaloir une solution contraire;

Attendu, enfin, que le refus de tout traitement préférentiel aux puissances bloquantes se recommande encore par les graves conséquences qu'entraînerait la solution contraire de nature à provoquer des actes de violence, ce qui serait manifestement en désaccord avec le texte et l'esprit de la convention de 1899 qu'ont signé les puissances bloquantes comme les puissances neutres;

Attendu que le traitement préférentiel étant écarté, le tribunal a pour mission de dire comment les 30 pour cent des revenus des douanes seront répartis entre toutes les puissances créancières;

Attendu que le tribunal doit pourvoir aux mesures nécessaires à la mise à exécution de son jugement;

Attendu que, d'après le compromis, le tribunal doit décider par qui seront payés les frais de l'arbitrage; que c'est une règle généralement admise que la partie qui succombe dans sa prétention supporte les frais du litige.

Par ces motifs,

1°. En ce qui concerne la mission donnée au tribunal arbitral par

les paragraphes 1 et 2 de l'article 1<sup>er</sup> des protocoles de Washington du 7 mai 1903 (traitement égal ou préférentiel),

Déclarer que l'Allemagne, la Grande-Bretagne et l'Italie n'ont droit à aucun traitement préférentiel sur les 30 pour cent des revenus des douanes des ports de la Guaira et de Puerto Cabello cédés par le Vénézuéla aux diverses puissances créancières;

Déclarer, en conséquence, que le produit de ces 30 pour cent sera réparti proportionnellement au montant des créances qui, d'après les protocoles intervenus entre les parties, sont admises à participer à cette répartition;

2°. En ce qui concerne la mission subsidiaire donnée au tribunal arbitral par le paragraphe 3 de l'article 1<sup>er</sup> des protocoles du 7 mai 1903 (répartition des 30 pour cent en cas de traitement non préférentiel),

Donner acte à la France de ce qu'elle dépose sur le bureau du tribunal les états des réclamations contre le Vénézuéla énoncées dans les annexes ci-après;

Dire que chaque puissance créancière, qui ne l'aurait déjà fait, devra fournir, tant au tribunal qu'aux parties, l'état de ses créances déjà garanties et l'état de celles qu'elle prétend faire concourir sur les 30 pour cent dont s'agit;

Fixer un bref délai dans lequel, sous peine de forclusion, les états des créances devront être produits;

Dire que la France sera admise sur les 30 pour cent dont s'agit pour la somme globale de 2,667,537.26 bolivares qui résulte des sentences prononcées par la commission mixte instituée en vertu du protocole franco-vénézuélien du 27 février 1903. (Annexe No. II);

Dire et juger que, sur le vu d'une expédition officielle du jugement à intervenir délivrée par M. le Secrétaire général du tribunal, le représentant de la Banque d'Angleterre à Caracas, ou tout autre dépositaire des fonds provenant des 30 pour cent dont s'agit, devra remettre au mandataire du gouvernement de la République Française, à ce désigné, et sur sa simple quittance, la part afférente à la France dans lesdits fonds, aux époques déterminées pour leur répartition.

Quoi faisant, lesdits dépositaires seront bien et valablement déchargés.

3°. En ce qui concerne les frais d'arbitrage (application de l'article 5 des protocoles du 7 mai 1903):

Condamner l'Allemagne, la Grande-Bretagne et l'Italie à supporter les frais d'arbitrage.

Et le tribunal fera justice.

Pour le gouvernement de la République Française:

LOUIS RENAULT, *Agent*.

EDOUARD CLUNET, *Avocat-Conseil*.

HENRI FROMAGEOT, *Secrétaire de la délégation*.

## ANNEXE I.

## A.

## INDEMNITÉ FABIANI.

Par la sentence arbitrale de Berne du 30 décembre 1896, le gouvernement des Etats-Unis de Venezuela a été condamné à payer à M. Fabiani, en titres de la dette diplomatique 3 pour cent, une indemnité de 4,346,656.51 francs.

## B.

## INDEMNITÉS FRANÇAISES POUR LES FAITS INSURRECTIONNELS DE 1892.

En vertu du paragraphe 3 de l'article 1<sup>er</sup> du protocole du 19 février 1902, le gouvernement vénézuélien a remis au gouvernement français, pour le règlement des réclamations provenant des événements insurrectionnels de 1892, un certificat provisoire pour la somme de 1,000,000 francs à échanger contre une valeur égale en titres de dette diplomatique, trois mois après que lui aura été signalé le mode de répartition de ladite somme entre les intéressés. (Certificat provisoire du 14 avril 1903.)

## C.

Liste des réclamations basées sur des faits antérieurs au 23 mai 1899 pour lesquels il a été accordé une indemnité par la commission mixte instituée en vertu du protocole du 19 février 1902.

| Numéros d'ordre. | Noms des réclamants.            | Somme accordée.   | Numéros d'ordre. | Noms des réclamants.     | Somme accordée.   |
|------------------|---------------------------------|-------------------|------------------|--------------------------|-------------------|
|                  |                                 | <i>Bolivars.*</i> |                  |                          | <i>Bolivars.*</i> |
| 1                | Abraham et Quiroz .....         | 5,800.00          | 21               | Piton .....              | 1,487,051.01      |
| 2                | Augé .....                      | 800.00            | 22               | Dachary .....            |                   |
| 3                | Franceschi et Cie .....         | 2,773.55          | 23               | Ligeron .....            |                   |
| 4                | Guglielmi et Benedetti .....    | 2,500.00          | 24               | Mirlin .....             |                   |
| 5                | Humbert .....                   | 500.00            | 25               | Puyou-Mulez .....        |                   |
| 6                | Lecca frères .....              | 8,000.00          | 26               | Siret .....              |                   |
| 7                | Leonardi (Jean-Hyacinthe) ..... | 8,000.00          | 27               | Battistini (D. M.) ..... |                   |
| 8                | Bouvard .....                   | 250,000.00        | 28               | Guasco (Anna) .....      |                   |
| 9                | Lindheimer .....                | 1,800.00          | 29               | Lalanne et Cie .....     |                   |
| 10               | Maingonnat .....                | 7,000.00          | 30               | Vincenti .....           |                   |
| 11               | Mannoni .....                   | 1,700.00          | 31               | Gracia frères .....      |                   |
| 12               | Piccioni .....                  | 128,000.00        | 32               | Branger frères .....     |                   |
| 13               | Rogé .....                      | 10,000.00         | 33               | Catala .....             |                   |
| 14               | Roncayolo .....                 | 120,000.00        | 34               | Michelangelo .....       |                   |
| 15               | Strauss .....                   | 140,000.00        | 35               | Perfetti .....           |                   |
| 16               | Allu .....                      | 500.00            | 36               | Pradler .....            |                   |
| 17               | Paoli .....                     | 35,000.00         | 37               | Longhi .....             |                   |
| 18               | Semidei .....                   | 11,000.00         |                  |                          |                   |
| 19               | Decauville .....                | 41,400.00         |                  | Total .....              |                   |
| 20               | Fromentin .....                 | 50,000.00         |                  |                          |                   |

\* Le bolivar équivaut à 1 franc.

D.

Liste des réclamations basées sur des faits antérieurs au 23 mai 1899 et réservées à l'examen du tiers arbitre.

[Article 2, paragraphe 1.]

| Numéros d'ordre. | Noms des réclamants.                    | Sommes demandées. | Numéros d'ordre. | Noms des réclamants.                                      | Sommes demandées. |
|------------------|---|-------------------|------------------|---|-------------------|
|                  |   | <i>Bolivars.</i>  |                  |   | <i>Bolivars.</i>  |
| 1                | Compagnie générale de l'Orénoque .....  | 7,616,098.63      | 6                | Fabiani .....   | 9,509,728.80      |
| 2                | Pieri .....                             | 4,010,400.00      | 7                | Massiani .....  | 801,784.96        |
| 3                | Société des bitumes de l'Orénoque ..... | 176,080.10        | 8                | Compagnie française des chemins de fer vénézuéliens ..... | 18,488,000.00     |
| 4                | Maninat .....                           | 2,000,000.00      |                  |   |                   |
| 5                | Brun .....                              | 500,000.00        |                  | Total .....   | 42,597,091.96     |

NOTE.—Mémoire.

ANNEXE II.

Liste des indemnités accordés par la commission mixte instituée en vertu du protocole de Washington du 27 février 1903, suivant sentences rendues au cours des séances de ladite commission (1<sup>er</sup> juin au 12 septembre 1903).

| Numéros d'ordre. | Noms des réclamants.                              | Sommes accordées. | Numéros d'ordre. | Noms des réclamants.                          | Sommes accordées. |
|------------------|---|-------------------|------------------|---|-------------------|
|                  |   | <i>Bolivars.</i>  |                  |   | <i>Bolivars.</i>  |
| 1                | Abadie et Anglade .....                           | 25,000.00         | 40               | Bertoncini (Louis) .....                      | 12,000.00         |
| 2                | Abbati (Philippe) .....                           | 1,533.44          | 41               | Bertucci (François) .....                     | 4,273.00          |
| 3                | Abbati (Philippe) .....                           | 4,739.60          | 42               | Bertucci (Jean) .....                         | 10,940.00         |
| 4                | Abd el Kader ben Ahmed et Merouane ben el Hadj .. | 600.00            | 43               | Bianchi (Jérôme) .....                        | 4,000.00          |
| 5                | Abraham et Quiroz .....                           | 1,675.00          | 44               | Bianchi (Joseph) .....                        | 16,200.00         |
| 6                | Abraham (Elias) .....                             | 512.00            | 45               | Biord (Virgile) .....                         | 1,000.00          |
| 7                | Abraham (Julien) .....                            | 12,000.00         | 46               | Blondin (Antoine) .....                       | 642.00            |
| 8                | Acquatella (Joseph) .....                         | 4,532.00          | 47               | Boccheciampe (Felix) .....                    | 7,000.00          |
| 9                | Agostini (Jean) .....                             | 7,500.00          | 48               | Boggio frère et sœurs .....                   | 8,000.00          |
| 10               | Agostini (Jean) .....                             | 18,716.00         | 49               | Bonetti (Jean-Baptiste) .....                 | 2,685.00          |
| 11               | Aïd Zouaïn .....                                  | 1,048.00          | 50               | Bonnet (Joseph) .....                         | 50,000.00         |
| 12               | Albertucci (Mathieu) .....                        | 8,000.00          | 51               | Bonifacio (Antoine) .....                     | 1,983.75          |
| 13               | Aldalah (Antoine) .....                           | 2,500.00          | 52               | Borghi (Pie et Antoine) .....                 | 8,000.00          |
| 14               | Alin (Eustache) .....                             | 600.00            | 53               | Cagninacci (Joseph) .....                     | 1,820.00          |
| 15               | Angeli (Marc) .....                               | 85,000.00         | 54               | Cappecchi (Louis) .....                       | 400.00            |
| 16               | Antonetti (Barthélemy) .....                      | 2,000.00          | 55               | Cappecchi (Philippe) .....                    | 7,000.00          |
| 17               | Antoni (Jules) .....                              | 2,100.00          | 56               | Capdevielle (Dominique) .....                 | 2,880.00          |
| 18               | Antoni (Michel) .....                             | 475.00            | 57               | Casale (François) .....                       | 4,816.00          |
| 19               | Antoni (Michel) .....                             | 9,000.00          | 58               | Casale (François) .....                       | 159.00            |
| 20               | Antonini (Toussaint) .....                        | 3,400.00          | 59               | Casalta (Virgile) .....                       | 4,480.00          |
| 21               | Antonorsi (Jean) .....                            | 7,500.00          | 60               | Casanova frères .....                         | 7,308.00          |
| 22               | Anziani (Pascal) .....                            | 2,870.50          | 61               | Casanova frères .....                         | 1,129.00          |
| 23               | Aquique (Philippe) .....                          | 2,000.00          | 62               | Catala (M <sup>me</sup> veuve) .....          | 15,000.00         |
| 24               | Augé (Jacques) .....                              | 2,000.00          | 63               | Catoni (Simon-Jean) .....                     | 1,500.00          |
| 25               | Augé (Jacques) .....                              | 8,000.00          | 64               | Cerani (François) .....                       | 6,800.00          |
| 26               | Badui (Jean et Elias) .....                       | 10,000.00         | 65               | Chapon et C <sup>ie</sup> .....               | 6,000.00          |
| 27               | Bahri (alias Bajares Elias) ..                    | 10,920.00         | 66               | Chistoni (Napoléon) .....                     | 20,000.00         |
| 28               | Bajares (Julien) .....                            | 5,000.00          | 67               | Chersia (M <sup>me</sup> veuve) .....         | 12,518.00         |
| 29               | Battaglini (B.) et Anziani (P. J.) .....          | 6,435.60          | 68               | Clavatti (Ours-Jules) .....                   | 1,484.00          |
| 30               | Battestini (Pierre-Ignace) ..                     | 10,791.12         | 69               | Colonie française de l'état Cumana .....      | 4,269.22          |
| 31               | Battestini (Pierre-Ignace) ..                     | 40,000.00         | 70               | Compagnie des caoutchoucs de l'Orénoque ..... | 8,600.00          |
| 32               | Battistini (Silvestre) .....                      | 6,000.00          | 71               | Croce (Ernest) .....                          | 6,008.00          |
| 33               | Battistini (Dominique-Marie) .....                | 40,000.00         | 72               | Dupuy (Gustave) .....                         | 8,000.00          |
| 34               | Benedetti (Jean-François) ..                      | 7,877.58          | 73               | Duval (Eugène) .....                          | 17,000.00         |
| 35               | Bonnon (Joseph-Albert) .....                      | 6,000.00          | 74               | Dachary (Pierre) .....                        | 25,000.00         |
| 36               | Benedetti, Bodino et C <sup>ie</sup> .....        | 1,500.00          | 75               | Dager (Joseph) .....                          | 5,500.00          |
| 37               | Benedetti (Louis) .....                           | 15,000.00         | 76               | Dager Cura (Jean) .....                       | 2,000.00          |
| 38               | Benigni (Martin) .....                            | 1,080.00          | 77               | Dalla Costa (Jean) .....                      | 10,000.00         |
| 39               | Benvenuit (André) .....                           | 800.00            | 78               | Dayan et Lanado .....                         | 15,000.00         |
|                  |   |                   | 79               | Dourzi (Abraham) .....                        | 280.00            |



## Liste des indemnités accordées par le commission mixte, etc.—Suite.

| Numéros<br>d'ordre. | Noms des réclamants.                             | Sommes<br>accordées. | Numéros<br>d'ordre. | Noms des réclamants.                         | Sommes<br>accordées. |
|---------------------|--|----------------------|---------------------|--|----------------------|
|                     |  | <i>Bolivars.</i>     |                     |  | <i>Bolivars.</i>     |
| 80                  | Elise (Isidoro-Antoine) .....                    | 1,000.00             | 180                 | Melik (Natalio) .....                        | 10,000.00            |
| 81                  | Felco (Jules-François et<br>Jean Baptiste) ..... | 75,000.00            | 181                 | Montaje (Jacob) .....                        | 9,000.00             |
| 82                  | Pericelli (Constantin) .....                     | 800.00               | 182                 | Michelangelo (Fabien) .....                  | 14,000.00            |
| 83                  | Pericelli (Pierre) .....                         | 10,000.00            | 183                 | Michelangelo (Fabien) .....                  | 10,000.00            |
| 84                  | Figarella (Blas Hyacinthe) .....                 | 7,100.00             | 184                 | Miliani (Jules-Mathieu) .....                | 10,000.00            |
| 85                  | Figarella (Jean Dominique) .....                 | 8,771.00             | 185                 | Mirlin (Emile) .....                         | 1,100.00             |
| 86                  | Forado (Emile) .....                             | 400.00               | 186                 | Mirlin (Emile) .....                         | 2,000.00             |
| 87                  | Fornelli (Louis-Auge) .....                      | 22,000.00            | 187                 | Monna (Michel Elie) .....                    | 8,000.00             |
| 88                  | Fournier (Joseph) .....                          | 8,000.00             | 188                 | Monsif (Salomon) .....                       | 10,000.00            |
| 89                  | Franceschi et C <sup>e</sup> .....               | 7,000.00             | 189                 | Morales (Alphonse-Jean) .....                | 18,000.00            |
| 90                  | Franceschi et C <sup>e</sup> .....               | 18,000.00            | 190                 | Moruno (Emilien) .....                       | 22,000.00            |
| 91                  | Franceschi et C <sup>e</sup> .....               | 11,271.00            | 191                 | Moser (Léon) .....                           | 700.00               |
| 92                  | Franceschi (Auge) .....                          | 15,000.00            | 192                 | Murati (Philippe-Antoine) .....              | 2,144.00             |
| 93                  | Franceschi (Antoine) .....                       | 75,000.00            | 193                 | Musloti (Pierre-Marie) .....                 | 18,000.00            |
| 94                  | Franceschi (Etienne) .....                       | 10,000.00            | 194                 | Nays (M <sup>me</sup> Victorine) .....       | 5,000.00             |
| 95                  | Franceschi (François) .....                      | 20,000.00            | 195                 | Naquet (Albert) .....                        | 600.00               |
| 96                  | Franceschi (Joseph) .....                        | 7,000.00             | 196                 | Narciso (Georges) .....                      | 8,000.00             |
| 97                  | Franchi (Pierre) .....                           | 800.00               | 197                 | Olive (Grégoire) .....                       | 1,000.00             |
| 98                  | Frastuck (Joseph) .....                          | 8,000.00             | 198                 | Olivieri frères .....                        | 1,515.00             |
| 99                  | Frastuck (Joseph) .....                          | 8,400.00             | 199                 | Oraini (André) .....                         | 800.00               |
| 100                 | Ganon frères .....                               | 4,000.00             | 200                 | Oraini (Louis) .....                         | 4,000.00             |
| 101                 | Glacomoni frères .....                           | 16,000.00            | 201                 | Oraini frères .....                          | 800.00               |
| 102                 | G .....  | 8,000.00             | 202                 | Palazzi père et fils .....                   | 97,000.75            |
| 103                 | G .....  | 130,000.00           | 203                 | Panavel (Joseph) .....                       | 800.00               |
| 104                 | G .....  | 2,300.00             | 204                 | Paoli (Roch) .....                           | 22,000.00            |
| 105                 | G .....  | 8,000.00             | 205                 | Pedaga (Henry) .....                         | 5,000.00             |
| 106                 | G .....  | 2,000.00             | 206                 | Pedaga (Henry) .....                         | 16,227.00            |
| 107                 | G .....  | 2,000.00             | 207                 | Perena (Augusto) .....                       | 18,000.00            |
| 108                 | H .....  | 4,000.00             | 208                 | Petit (Edouard) .....                        | 1,000.00             |
| 109                 | H .....  | 75,000.00            | 209                 | Peyronquet (Edouard-Ro-<br>main) .....       | 700.00               |
| 110                 | H .....  | 5,477.25             | 210                 | Peyron (Julien) .....                        | 8,000.00             |
| 111                 | Iz .....   | 50.00                | 211                 | Peyronnet (M <sup>me</sup> veuve) .....      | 600.00               |
| 112                 | Jablur (Antoine) .....                           | 8,000.00             | 212                 | Peri (Dominique) .....                       | 800.00               |
| 113                 | Jamet (Eugène) .....                             | 2,000.00             | 213                 | Pietrantonio frères .....                    | 12,000.00            |
| 114                 | Jouet et C <sup>e</sup> .....                    | 8,641.70             | 214                 | Pietrantonio frères .....                    | 18,000.00            |
| 115                 | Laffont (Pierre) .....                           | 1,000.00             | 215                 | Pietrantonio C <sup>e</sup> .....            | 18,000.00            |
| 116                 | Leduc et Ives, Fischer et C <sup>e</sup> .....   | 22,444.00            | 216                 | Pietri (M <sup>me</sup> veuve) .....         | 400.00               |
| 117                 | Leclercq (Benjamin Henri) .....                  | 2,300.00             | 217                 | Pietrini (M <sup>me</sup> veuve Lucie) ..... | 2,000.00             |
| 118                 | Leonardi (François) .....                        | 4,000.00             | 218                 | Pietrini (M <sup>me</sup> veuve J.-P.) ..... | 7,645.00             |
| 119                 | Leonardi (François) .....                        | 10,000.00            | 219                 | Pietrini (Philippe) .....                    | 10,000.00            |
| 120                 | Leonardi (Jean) .....                            | 4,444.00             | 220                 | Poggi frères .....                           | 1,000.00             |
| 121                 | Leonardi (Toussaint) .....                       | 1,500.00             | 221                 | Poggi (Auge) .....                           | 600.00               |
| 122                 | Leonardi (Toussaint) .....                       | 2,500.00             | 222                 | Pomies (Jeno) .....                          | 400.00               |
| 123                 | Leonardi (Toussaint) .....                       | 10,000.00            | 223                 | Pradier (Georges) .....                      | 8,000.00             |
| 124                 | Liccioni (Antoine) .....                         | 20,500.00            | 224                 | Prosper (Paul) .....                         | 8,000.00             |
| 125                 | Liccioni (Jules) .....                           | 11,000.00            | 225                 | Prosper (Guillaume) .....                    | 0,000.00             |
| 126                 | Ligeron (Henri) .....                            | 20,200.00            | 226                 | Raffalli frères .....                        | 25,704.00            |
| 127                 | Liegren (Henri) .....                            | 1,000.22             | 227                 | Reaucci (Antoine et Domi-<br>nique) .....    | 2,000.00             |
| 128                 | Lindemer (Edouard) .....                         | 11,111.75            | 228                 | Réganères (Alexis) .....                     | 11,000.00            |
| 129                 | Lorenzi (Joseph) .....                           | 2,000.00             | 229                 | Ristorcelli (Antoine) .....                  | 2,000.00             |
| 130                 | Lucca et C <sup>e</sup> .....                    | 4,700.00             | 230                 | Roffa (M <sup>me</sup> ) .....               | 60,211.27            |
| 131                 | Lucca et C <sup>e</sup> .....                    | 8,745.00             | 231                 | Rossin (Amin L.) dit Ga-<br>saine .....      | 4,000.00             |
| 132                 | Luchesi (F.) et Corbi (A.) .....                 | 4,000.00             | 232                 | Rutilly (Auge-François) .....                | 800.00               |
| 133                 | Luccesi (M <sup>me</sup> veuve Roch) .....       | 1,000.00             | 233                 | Saint-Pasteur (Julien) .....                 | 17,000.00            |
| 134                 | Luciani (Dominique) .....                        | 40,000.00            | 234                 | Sales (Philippe) .....                       | 800.00               |
| 135                 | Luciani (Pierre-Auge) .....                      | 2,000.00             | 235                 | Salvatori (Joseph) .....                     | 1,000.00             |
| 136                 | Luz (Blas) .....                                 | 10,000.00            | 236                 | Santelli (Antoine) .....                     | 800.00               |
| 137                 | Marengo (François) .....                         | 2,500.00             | 237                 | Santelli (François) .....                    | 12,400.00            |
| 138                 | Marengo (Jacques) .....                          | 2,000.00             | 238                 | Santini (Pierre) .....                       | 20,000.00            |
| 139                 | Mariani (Antoine) .....                          | 45,000.00            | 239                 | Santoni (Paul) .....                         | 40,000.00            |
| 140                 | Mariani (Dominique) .....                        | 1,000.00             | 240                 | Sarrasin (Léon-André) .....                  | 5,515.00             |
| 141                 | Marreget Jouanet (Paul-<br>Auguste) .....        | 2,400.00             | 241                 | Saulny (Paul) .....                          | 20,000.00            |
| 142                 | Marreget Jouanet (Victor<br>Dominique) .....     | 5,000.00             | 242                 | Savelli (Dominique) .....                    | 8,000.00             |
| 143                 | Mascher (Alfred) .....                           | 4,120.00             | 243                 | Savery Joseph .....                          | 4,000.00             |
| 144                 | Masiani (Thomas et fils) .....                   | 19,000.00            | 244                 | Savignar (Jean) .....                        | 8,000.00             |
| 145                 | Mattei (Joseph-Marie) .....                      | 1,000.00             | 245                 | Scotti (Jean-Laurent) .....                  | 1,000.00             |
| 146                 | Mattei (Michel) .....                            | 2,000.00             | 246                 | Segurani (Pierre) .....                      | 170.00               |
| 147                 | Medori (Pascel) .....                            | 25,000.00            | 247                 | Semiel frères .....                          | 131,214.70           |
| 148                 | Melik (Manuel) .....                             | 5,000.00             | 248                 | Semin (Abel) .....                           | 8,000.00             |
| 149                 | Melik (Natalio et Antoine) .....                 | 10,000.00            | 249                 | Signanini (Dominique) .....                  | 800.00               |

*Liste des indemnités accordées par la commission mixte, etc.—Suite.*

| N <sup>os</sup><br>d'ordre. | Noms des réclamants.                        | Sommes<br>accordées. | N <sup>os</sup><br>d'ordre. | Noms des réclamants.         | Sommes<br>accordées. |
|-----------------------------|---|----------------------|-----------------------------|------------------------------|----------------------|
|                             |   | B. l.                |                             |                              | Bolivars.            |
| 220                         | Sonore (Simon) .....                        | 00                   | 228                         | Vincentelli (Louis) .....    | 20,000.00            |
| 221                         | Tajan (Oléstin) .....                       | 00                   | 229                         | Ventura de Ayruth dit        |                      |
| 222                         | Tarbès et C <sup>ie</sup> .....             | 00                   |                             | Airoet .....                 | 6,000.00             |
| 223                         | Tarbès (Laurent) .....                      | 00                   | 230                         | Venturini (Pierre) .....     | 25,000.00            |
| 224                         | Taux (Jean) .....                           | 00                   | 231                         | Venturini (Toussaint) .....  | 3,560.00             |
| 225                         | Tomas (Barthélemy) et C <sup>ie</sup> ..... | 00                   | 232                         | Yunes (Joseph-Antoine) ..... | 2,220.00             |
| 226                         | Tomas (Barthélemy) et C <sup>ie</sup> ..... | 00                   |                             |                              |                      |
| 227                         | Vincentelli et C <sup>ie</sup> .....        | 1 00                 |                             | Total .....                  | 2,667,537.26         |

## ANNEXE III.

## DETTE POSTALE.

Pour frais de transports et de transit de correspondances effectués du 1<sup>er</sup> janvier 1896 au 31 décembre 1902, le gouvernement vénézuélien est débiteur de l'administration postale de la République Française, de la somme de 267,457.57 francs par application de la convention d'Union postale signée à Washington le 15 juin 1897. (Art. 4, § 3, 5, 6, et 7.)

## THE COUNTER CASE ON BEHALF OF SPAIN.

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The Spanish delegate has taken cognizance of the arguments and conclusions set forth in the cases laid before the special court of arbitration on behalf of Germany, Great Britain, and Italy by their respective agents, delegate, and counsel in favor of their pretension to separate or preferential treatment in the liquidation of their claims against Venezuela out of 30 per cent of the customs revenue of La Guaira and Puerto Cabello. In view of the instructions received from his Government and considering that none of the arguments put forward in any way annul the propositions and conclusions of the case presented by him on behalf of Spain, it becomes his duty to confirm the said case in every point, to develop its arguments, and to supplement them with others which, in his opinion, completely refute those contained in the cases of the three blockading powers.

### I.

Although distinct in form and method, the three cases to which the Spanish Government is about to reply naturally resemble each other to a certain extent in their final reasoning.

It could not be otherwise, given the identity of the procedure adopted by the three powers, and its conclusions and that of the pretensions sustained before the High Tribunal of Arbitration. Although differently worded, although one case rests upon subtle legal arguments, another on considerations of a practical order, and the third on so-called motives of equity, the propositions upon which our adversaries endeavor to build their contention can be summed up in two points. Once the weakness of the foundation is proved, the whole fabric of argument will necessarily be destroyed. This, therefore, must be the Spanish delegate's first intent. An easy task, indeed.

The first of these fundamental arguments appears to be the affirmation that the 30 per cent stipulated by the protocols of February 13, 1903, constitutes a special and exclusive guaranty in the possession of the three powers as a trophy of their triumph, which they refuse to divide with the nonbelligerent nations. But, in the opinion of His

Catholic Majesty's Government, this view is irreconcilable with the real state of the case. Not only do the terms of the grant of the 30 per cent stipulated in the protocols primarily signed by Venezuela and the allied powers and confirmed by those, concluded later on with the nonbelligerent nations, recognize the collective character of that grant, which fact accounts for the invariable contention of the Venezuelan Government that the sum thus laid apart was to benefit equally all the creditor nations; but Mr. Bowen, in his declaration of January 30, 1903, expressly specifies and details the reasons for which this offer of payment is made extensive to all the nations concerned, and not for the exclusive benefit of the blockading powers.

These are his words:

I object to paying first the claims of the allies and the claims of the other nations afterwards; because, first, I think it unjust and unfair and illegal to tie the hands of the said other nations for the period of five or six years that it would take to pay the claims of the allies; second, if I recognize that brute force alone can be respected in the collection of claims, I should encourage the said other nations to use force also; third, if the allied powers wanted preferential treatment they should have asked for it in the beginning, and should not now propose it after I understood clearly that all the conditions of the allied powers had been stated.

Mr. Bowen never departed from this solid standing, which, let it be incidentally remarked, briefly contains the grounds of Spain's hope of justice at the hands of the high court, and consented only to submit to arbitration what the contrary cases take for granted. It must therefore be allowed in the first place as a juridical fact that all the powers, both Spain and the nations in her case, as well as those whose forcible action preceded the setting aside of the indemnity fund, are *de jure* equally in possession of the security or guarantee afforded by Venezuela. Neither is this common character (which is to continue until the high court shall in its award determine the mode of distribution) in any way impaired by the circumstance that the depositary of the fund is the English Bank of Caracas, a financial establishment the nationality of which is the same as that of one of the allied powers. Should Belgian functionaries be obliged to take charge of the Venezuelan customs as a consequence of the possible shortage of revenue foreseen in the protocols, would this eventuality confer a right of possession or of preferential treatment to Belgium?

All the States interested in the question of the Venezuelan claims are equally in possession of the security. This is the logical consequence of the facts set out above, and should this be denied it must in any case be conceded that the actual detainer of the right of possession in the name of all concerned and pending a final decision is the high court itself.

The second essential mistake made by the three allied powers consists in deducing from the favorable results obtained by their forci-

ble measures the proposition that should the nonbelligerent nations wish to partake of the benefit accruing therefrom (and the blockading powers even go so far as to contend that the nonbelligerents have already partaken of it), they come not only *ex æquitate* but *ex jure* under the obligation of meeting the expenses of the war by allowing the claims of the belligerent powers to be liquidated before their own. This advantage and extension of right is firmly denied *ad limina* by the Spanish delegate on behalf of his Government. He believes, on the contrary, that as a consequence of the disorder in the economic life of a people inevitably brought about by a state of war (such as increase of national expenditure, diminished national credit, etc.) Venezuela's solvency has been reduced and the possibility retarded of Spain's being able to give effect to her lawful rights.

Furthermore, the Venezuelan Government has constantly declared itself prepared to liquidate our legitimate claims. In what way, therefore, has the action of the blockading powers improved the position of the Spanish creditors? We have, it is true, obtained the specific assignment of a source of payment, but this advantage is owing, as much as Spain is concerned, to a spontaneous offer on the part of the Venezuelan Government, and there is no ground for supposing that it would not have been obtained as easily or sooner, perhaps, without the forcible action taken in Venezuelan waters. In the mind of the Spanish delegate he is entitled to make this opinion, and he believes that these considerations, added to those contained in his case, are a sufficient reply to those expressed in the cases of the three allied powers. He recognizes, however, that without taking into account the necessity of defending his country's rights as far as possible, he is obliged from motives of courtesy to briefly reply to the special arguments embodied in those cases.

## II.

The three allied powers contend, and the German case declares it in so many words (*vide*, p. 19, legal proposition No. 3), that it is Venezuela's natural duty to indemnify the three allied powers for their expenses incurred by the blockade, and that the three powers not having demanded any such compensation in view of the precarious state of the Venezuelan treasury, a preferential or prior right to the proceeds of the 30 per cent of the La Guaira and Puerto Cabello customs is owing to them in consequence.

We will not discuss here the duty which Venezuela may or may not be under as regards compensation to the three allied powers on account of those expenses. It will suffice to consider:

(1) That if Germany, Great Britain, or Italy considered it natural and necessary that the Republic of Venezuela should make over to them a sum as compensation, previous to the cessation of the block-

ade, they could and should have demanded such compensation before cessation, and with still greater reason should they have done so when they adduced their other conclusions, such as payment of certain claims known as "first-rank claims," etc., in the notes addressed by the British and Italian ambassadors and the German chargé d'affaires to Mr. Bowen on February 23 and 24, respectively, which conclusions were immediately accepted by the Venezuelan plenipotentiary.

If Germany, Great Britain, and Italy did not then demand an indemnity or special and separate compensation on account of the expenses incurred by the blockade, is their attitude at that time to be explained by the consideration that such indemnity or compensation was unnecessary once the blockade had procured without demur the immediate payment of certain claims qualified as "first-rank claims," the total of which amounts to the respectable sum of \$385,000, without previous investigation on the part of Venezuela? What more preferential or separate treatment than this? In now alleging another right of priority in favor of their claims submitted to the mixed commissions are they not claiming preferential or separate treatment for the second time?

(2) That this new preferential or separate right would not be enforced at Venezuela's expense, but at that of the other creditor powers, inasmuch as Venezuela would not be obliged to spend a penny more in paying the credits of the blockading powers before the others than in paying them simultaneously with the other creditor powers; whence it follows that Germany, Great Britain, and Italy would not obtain compensation for the expenses of the blockade at Venezuela's expense, but at the expense of the neutrals, which would be wholly unjust and without foundation in right, it being an undeniable proposition of international law that the cost of a war should be paid by the vanquished and not by neutral nations.

(3) That the separate or preferential treatment which the three allied powers might now obtain could not be considered as an indemnity or compensation for the expenses of the blockade, because, even supposing that Germany, Great Britain, and Italy should liquidate before the other interested powers, the claims of their subjects at present before the mixed commissions and to be settled out of the 30 per cent of the receipts of the customs of the ports of La Guaira and Puerto Cabello, the moneys thus collected would invariably and in any case be made over to the injured British, German, or Italian subjects, but not to the respective treasuries of those powers, which would, therefore, not receive compensation for the expenses of the blockade.

That is to say, that such an eventuality would merely result in considerably damaging the interests of the subjects or citizens of the non-belligerent powers, whose condition is not inferior to that of the



subjects of Germany, Great Britain, and Italy, and to whom is owing on the part of Venezuela the same treatment and the same consideration as the subjects of the three blockading powers.

(4) That the claim of the belligerent powers to compensation for the expenses incurred by them in consequence of their action against Venezuela, to be paid out of the 30 per cent of the receipts of the customs of La Guaira and Puerto Cabello set aside by the Republic for the settlement of all its creditors, might be justified to a certain extent if that compensation had been the only object and cause of the proceedings which gave rise to those expenses; but this is exactly contrary to the actual facts. The allied powers had recourse to the blockade and to other forcible measures in order to obtain the settlement of other more urgent claims, which, according to Germany, Great Britain, and Italy, admitted of no discussion, and in order to avenge offenses inferred to their honor and to the persons of their subjects, as declared in their respective ultimata. The credits now under discussion never constituted, properly speaking, the *casus belli*, Venezuela having from the first expressed her readiness to liquidate them, once proven, and having immediately consented to the present arrangement by her notes of January 23 and 24 last.

It can, therefore, very properly be maintained that the blockade and ensuing forcible measures in no way influenced the state of things by which the nonbelligerent powers are benefited, according to the allies. But even were it so, a clear and precise liquidation of the effective value of the other advantages obtained by the three powers as a result of the expenses mentioned would first be necessary. Only after having published these expenses and made this reduction, and after having proved what to us seems impossible—that is to say, that the neutral States have benefited thereby—it might be possible to make the latter in some measure responsible, but in no case could the blockading powers expect a preferential treatment in the distribution of moneys belonging not to the respective Governments, but to the private individuals concerned.

### III.

The three allied powers naturally seek, as we do, to establish their contentions on the rules of civil and Roman law, the *jus gentium* “par excellence.” On these grounds they claim a right of priority to the pledge, in the first place on account of a special hypothecation constituted in their favor; secondly, as a consequence of the expenses incurred to insure the safety of the latter; and, thirdly, in view of a kind of *negotiorum gestio* realized by them to the profit of the non-belligerent powers.

We will add nothing to what has been already set forth by us with regard to the special hypothecation proven, according to the powers,

by possession of the security. No such possession exists, and the texts of Roman law quoted in the Italian case, which sanction the right of him who has acquired the object of discussion as a pledge over those who have mere personal interests in the same, are not applicable to the point here at issue.

Neither can such preference be inferred from the texts of civil law, which grant a superior right to the creditor who has incurred expenses in insuring the safety of the property of the common debtor, to be refunded therefor, even if the said expenses or credits be posterior in time to those of the other creditors.

The texts quoted from Ulpian in the case on behalf of Great Britain grant, it is true, such priority even to him who in the first instance was not a creditor of the owner of the subject of the earlier charge. But both these texts, and the cases of bottomry and salvage, also quoted by the British delegate, refer to the safety of the subject, whereas the point is to prove, in order that these principles may become applicable, that the expenses incurred by the three allied States were of that character. Was their object to assure the solvency of Venezuela? Do the three powers imagine, we repeat, that the commerce and revenues of the Republic have been improved and strengthened as a result of their action in December and January last?

Their action may have been justified, we will not discuss the point here, as being the only possible means of obtaining legitimate reparation or the necessary expiation of real offenses, but he would be bold indeed who would maintain that the motive of those measures was the desire to insure the revenues of Venezuela in order that all her creditors might obtain satisfaction.

It should, moreover, be particularly remembered that in all the cases of civil and maritime law quoted by the respective delegates, agents, or counsel for the three nations, the expenses incurred by the creditor for the common profit, such as feeding of cattle pledged, safety or repairs of a ship, etc., are those which enjoy a prior right but never the earlier credits of him who incurs them. Even admitting the analogy invoked in the cases of Great Britain and Italy, even supposing that their right and that of Germany to receive from the Venezuelan Government, before all the other parties concerned the sums spent in insuring the safety of the pledge was perfectly proved, these sums could never be drawn from a fund exclusively set aside for the settlement of the claims recognized by the mixed commissions, nor could the credits issuing from those expenses in any case confer to these private claims the priority which the former might perhaps be entitled to with regard to the rest of Venezuela's national property.

We are thus induced to clear up a point of doubt. His Catholic Majesty's delegate has never considered Venezuela as bankrupt or insolvent; he has merely affirmed the existence of a meeting of cred-

itors, or, in other words, that we are discussing "the distribution among different creditors of the property set aside by the common debtor to meet certain obligations." The remarks which appear in this respect in the case submitted by the agent and counsel of His Italian Majesty's Government are, therefore, superfluous.

His German Majesty's delgate has endeavored in his case to discover legal grounds for his Government's contention by assimilating the action of the allied powers in Venezuela to a *negotiorum gestio*:

If the other powers claim the right to share equally in the advantages secured by the blockading powers for their claims, it is clear that, according to every principle of law and equity, they will have to refund part of the expenses incurred while the blockading powers acted as *negotiorum gestores* for them.

This is a specious and apparently forcible argument, which it will be necessary to destroy by a careful study of the juridical principle alluded and of the possibility of adapting to it the proceedings of the three allied powers in Venezuelan waters.

According to the expounders of Roman law, the constituent elements of *procuratio* which confer the right to compensation for the expenses incurred on behalf of another, are that another's business should really and truly have been the object of management by the claimant to such compensation, and that the acts of the latter should have been realized with intention to manage and as a means of obliging the other party,<sup>a</sup> who must be ignorant of such *procuratio* and not have expressly forbidden it.<sup>b</sup>

The texts of the digest are unanimous in declaring that if the *negotiorum gestor* merely seeks his own profit he has no claim upon the party indirectly benefited by his act and independently of his will.<sup>c</sup> Another text expressly observes that he who has done a favor not necessary in the eyes of the owner has not deserved reward or payment. *Non utiliter negotium gerit qui rem non necessariam aggreditur.*<sup>d</sup>

When and how did Germany, Great Britain, and Italy announce that they were taking coercive action against Venezuela for the good of all the creditor States? In what place, in what document, in which note did they constitute themselves *negotiorum gestores* of the other powers? His Catholic Majesty's delegate has seen nothing of this in the ultimata and diplomatic correspondence of the allied powers. On the contrary, in all and each of their documents they utter the solemn declaration that they were acting solely to avenge the injury done to themselves and to their subjects, and to seek payment and redress for themselves alone. This is expressly manifested

<sup>a</sup> Fr. 3, par. 1<sup>st</sup>, and Fr. 29, *præmium*: D. De communi dividendo (10, 3).

<sup>b</sup> Fr. 8, par. 3: D. De negotiis gestis (3, 5).

<sup>c</sup> Fr. 33: D. De conditione indebiti (12, 6). Vide also the two texts mentioned in Note 1.

<sup>d</sup> Fr. 10, par. 1<sup>st</sup>: D. De negotiis gestis (3, 5).

in the case on behalf of Italy (Par. IX, p. 16): "The purpose of the blockading powers was avowedly to obtain satisfaction for their own claims alone."

In international relations, and particularly in cases of forcible action, one essential element of the *negotiorum gestio* must always be wanting, namely, the ignorance of the party benefited thereby. Spain, like the other neutral powers, had knowledge of the allies proceedings, and spontaneously assured Venezuela that she considered it neither necessary nor useful, as the Spanish delegate has shown in his case. Spain believed, and still believes, that she and her subjects would find redress for their grievances by ordinary peaceful and legal means, and has, therefore, derived no benefit from the action of the three allied powers. Moreover, the setting aside of the debated 30 per cent, which would have constituted the result of the *procuracion*, is not the work of the blockading powers, but the consequence of a spontaneous offer on the part of Venezuela made through Mr. Bowen. The case would have been different had the *negotiorum gestio* been realized not a *parte postea*; that is to say, now that the blockading powers find their contentions opposed, but had they and other nations acted as they did in China, as we have so often observed before, by demanding and obtaining equal and complete satisfaction for all Venezuela's foreign creditors. A right to gratitude and compensation might, and perhaps would, have then been recognized. Where would the benefit be if, as Mr. Bowen foresees, the nonbelligerent States did not receive a penny of their claims for the space of five or six years in the eventuality of the blockading powers obtaining priority?

On the other hand it appears necessary to couch our terms more precisely if we wish to avoid begging the question as is done in the cases on behalf of the blockading powers. His Catholic Majesty's Government does not demand, although the Imperial German delegate seems so to imagine, a part in the privileges or securities obtained by the three blockading powers, or, in other words, does not consider that Germany, Great Britain, and Italy have acted as *gestores negotiorum*, because it absolutely denies that any privilege based upon the 30 per cent of the customs receipts of La Guaira and Puerto Cabello has been granted to the said three nations which is not already common to all and each of Venezuela's creditor powers.

On the contrary it maintains and insists that the only alteration of its rights and those of its subjects issuing from the events and international stipulations since December of last year consists in the setting apart, in virtue of the protocol of April 2, of a revenue the proceeds of which are to be devoted to meet its credits, and that, therefore, it is under no obligations on account of a *negotiorum gestio*, which neither exists nor benefits it nor has any hold upon it whatever.

Neither must we forget that had that procuration existed, that had the nonbelligerent powers been obliged to refund expenses incurred on their behalf, and that had the doctrine expounded above in referring to obligations incurred by the safe-keeping of a security been applied to the present case, preferential or separate treatment for claims liquidated in favor of Germany, Great Britain, and Italy would not result therefrom with respect to those of Spain and other interested nations, but merely the duty of compensating Germany, Great Britain, and Italy after the benefit derived from their action had been proved.

These are and must be two absolutely distinct ideas, not to be confused without manifest error. With regard to the credits against Venezuela to be paid exclusively out of the 30 per cent, there can not exist neither *de jure* nor *de facto* any other right of priority than that begotten by the nature of the credits themselves, and this being the same in all, there can be no preference whatever.

#### IV.

In their endeavor to confirm these legal considerations by apparent or specious motives of equity, the three blockading powers allege in their cases the injustice of the nonbelligerent nations reaping the benefit of what Germany, Great Britain, and Italy had sown and thus depriving the latter of part of the immediate profit. In other terms, Germany, Great Britain, and Italy esteem that the neutral powers are to feel satisfied with being allowed to glean after five or six years in the field previously reaped by the three blockading powers alone.

Putting aside the fact that, as has been remarked above, those benefits, *i. e.*, the customs receipts of La Guaira and Puerto Cabello, were not fostered or produced by Germany, Great Britain, or Italy, but that, on the contrary, they may well be said to have damaged them or to have damaged those who might have enjoyed them during the time of the blockade, and putting aside the fact that these benefits have been offered by Venezuela to be equally enjoyed in common by all her creditor powers, it behooves us to consider and repeat here what I had the honor of submitting to the court in the case on behalf of Spain on October 18 last, with regard to the events of 1900 in China. The case there was far worse than ever in Venezuela. Riot, assault, rapine, and the slaughter of foreigners were the order of the day, making an armed intervention of certain European powers, of the United States of America, and of Japan undoubtedly necessary for the restoration of peace and the obtaining of due compensation for the crimes committed by the Boxers.

Some twelve months ago Germany, Great Britain, and Italy backed



up their claims and sought redress for their grievances by bombarding and blockading the coasts of Venezuela and seizing several warships belonging to the Republic, which they kept for sometime as a kind of security; but it was also to obtain atonement for injuries done them and compensation for damage inflicted that they bombarded the Chinese coasts in 1900 and occupied *manu militari* many fortresses and towns of the Celestial Empire, besides seizing several Chinese warships and keeping them, as well as the fortifications, for a certain space of time as a warrant for the carrying out by the Imperial Chinese Government of the conditions imposed.

Spain took no part in those military proceedings, just as she has taken none in the naval action against Venezuela, neither did she have in her possession any pledge in the shape of a fort, town, war ship, or territory for the payment of her claims against China, and, yet, neither did Germany, Great Britain nor Italy declare at that time that Spain had not the right to be paid simultaneously with them and in the same manner, nor that they had a right to first payment or to preferential or separate treatment.

Let us for argument's sake suppose that in 1900 the idea arose in the mind of Germany, Great Britain, and Italy that they were entitled to a preferential right with regard to Spain.

If this thought did present itself to them, they must undoubtedly have dismissed it at once from their minds as contrary to justice and equity, since they never gave it official form nor endeavored to put it into practice. In the present case, therefore, they show a want of logic contrary to their former line of conduct in claiming what they did not claim before in a very similar case.

## V.

The Imperial German case (argument first from the purely legal point of view) in its concise narrative of the negotiations between Venezuela and the blockading powers refers to President Castro's declarations, transmitted by the United States embassy in Berlin on January 1 and 9 last, respectively, to his excellency the imperial German secretary of state for foreign affairs. (Vide Nos. 6 and 8 of the appendix to the case on behalf of Germany.) It is true that President Castro thereby recognizes in a general way the claims preferred by the blockading powers and accepts the conditions imposed by the latter, but it is no less true that President Castro clearly and categorically expresses in those declarations his firm intention of sending Mr. Bowen to Washington in order to negotiate not only the settlement of the blockading powers' claims, but the settlement of the claims of the other interested nations, in same form and manner and with the same securities for all, as appears evident from the fact



that the President drew no distinction between one series of claims and the other. Hence it results that Germany, Great Britain, and Italy have no ground for affirming that Mr. Bowen in his confidential telegram to Mr. Hay, the American Secretary of State, a part of which is quoted in Appendix 8, promised to make over the customs revenues of Venezuela as a security exclusively for the benefit of Germany, Great Britain, and Italy.

If we compare this passage of Mr. Bowen's telegram with President Castro's declarations and remember that it was the latter who had given Mr. Bowen his instructions, it becomes clear that Mr. Bowen, in indicating to Germany and Great Britain the security offered for the liquidation of their claims against Venezuela, neither could nor did intend to signify that this security was exclusively reserved for Germany and Great Britain, but that he merely made known the common source of liquidation for all the claims.

A flaw may perhaps be apparently detected in this argument, inasmuch as Mr. Bowen's telegram does not mention the nonbelligerent or neutral powers, but it must be considered that neither is any mention made of Italy, in spite of her status as a blockading power. Now we ask, have Germany and Great Britain deduced from this omission in Mr. Bowen's telegram the conclusion that the revenues indicated in that communication were set apart exclusively for the profit of Germany and Great Britain, and not for that of their ally in the blockade? But if this conclusion has not been arrived at by them with respect to Italy, how can it be formed with regard to the neutral powers?

## VI.

We will end our reply by briefly answering certain arguments contained in the case presented by the agent and counsel of His Majesty the King of Italy, who, with a zeal which says much for their patriotism, have made the utmost and most subtle use of their remarkable erudition.

Besides the motives invoked by their copleaders, they found a right of prior payment upon the dates of their protocols, forgetting that the protocols of February 13 already reserved the right of the other interested powers and left the whole question of preferential treatment to the decision of the High Tribunal of Arbitration. It is, therefore, impossible to justify the right of priority in this way. Only in the hypothesis, so often alluded to here, that the 30 per cent of the La Guaira and Puerto Cabello customs had been set apart on February 13 for the exclusive benefit of the blockading powers, could such a right exist.

The Italian agent and counsel have also made a somewhat veiled

effort to prove the nullity of the protocols concluded by the non-belligerent powers, by expressing a doubt as to whether Mr. Bowen was authorized or not by his Government to negotiate on behalf of Venezuela. They here lose sight of the fact that even were this proved to a certainty, it would be a point to be debated exclusively between the envoy and the authorities in the United States of America, but not to be taken into account by the Spanish plenipotentiary, who treated with a person duly provided with the full powers of the Government in whose name he acted.

It would be equally easy to answer another objection made in the same case to the effect that the protocols concluded by the non-belligerent powers may be void and of no value according to the constitutional law of those nations, because they have not obtained the sanction or ratification required by their respective constitutions. Although this is a point of a purely domestic order between each Government and its subjects, which in no way affects foreign powers, His Catholic Majesty's delegate feels it his duty to declare that the protocol of April 2, concluded by order of his Government, is constitutionally perfect and valid in all its parts as belonging to the class of engagements which can be undertaken by His Majesty and by his responsible Government in his royal name, without being specially authorized by a law made by the King and Parliament.

## VII.

Before concluding His Catholic Majesty's delegate considers it necessary to lay stress upon an event which has taken place while he was preparing his case and which has confirmed the fundamental principle of the latter with all the authority enjoyed by the two powers which have realized this most important act. I allude to the arbitral convention signed on the 14th instant by the Governments of Great Britain and France.

These two great powers give way thereby to the irresistible movement, which day by day reduces the limits of force and extends those of international peace and justice, and with them the sphere of action of the permanent court, from which the present high tribunal derives its existence. In so doing they have not, however, consented to sacrifice self-evident rights to a useless process of scrutiny and proof. They have excluded those cases in which arbitration is impossible, because they refer to question outside the juridical order and effecting the honor and dignity of nations, and they assimilate to the latter those involving the interest of a third power because they judge that it is unlawful, even under pretext of avoiding a war to sacrifice the right of a third party.

The result of this all-important contract is to transfer from the

pages of speculative treatises to the more practical ground of conventional law the irrefutable principle which enables Spain to calmly await the award of this high arbitral tribunal, as a nation in no way implicated in the conflict between Venezuela and the blockading powers. Hence, also, springs Spain's hope that Great Britain, being one of the two nations which has so nobly and so recently proclaimed that principle, will not be surprised, even at the risk of injury to small interests of the moment, if the just rule of respect for the rights of third parties be confirmed by the award which Spain expects to deserve from the sense of justice of the high court of arbitration.

### VIII.

Article 1 of the protocol, signed in Washington on April 2 last by His Excellency Don E. de Ojeda, His Catholic Majesty's minister plenipotentiary, and Mr. H. W. Bowen, plenipotentiary for the Republic of Venezuela, declares as follows:

**ARTICLE I.** All claims owned by subjects of His Majesty the King of Spain against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the commission hereinafter named, by the Government of His Majesty the King of Spain or its legation at Caracas, shall be examined and decided by a mixed commission, which shall sit at Caracas, and which shall consist of two members, one of whom is to be appointed by His Majesty the King of Spain and the other by the President of Venezuela.

It is agreed that an umpire may be named by the President of Mexico. If either of said commissioners or the umpire should fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. Said commissioners and umpire are to be appointed before the 1st day of May, 1903.

The commissioners and the umpire shall meet in the city of Caracas on the 1st day of June, 1903. The umpire shall preside over their deliberations, and shall be competent to decide any question on which the commissioners disagree. Before assuming the functions of their office the commissioners and the umpire shall take solemn oath carefully to examine and impartially decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the record of their proceedings.

The commissioners or, in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature, or of the provisions of local legislation.

The decisions of the commission, and in event of their disagreement, those of the umpire, shall be final and conclusive. They shall be in writing. All awards shall be made payable in Spanish gold, or its equivalent in silver.

Article 5 runs thus:

**ARTICLE V.** In order to pay the total amount of the claims to be adjudicated as aforesaid, and other claims of citizens or subjects of other nations, the Government of Venezuela shall set apart for this purpose, and alienate to no other purpose, beginning with the month of March, 1903, 30 per cent in monthly payments of the customs revenues of La Guaira and Puerto Cabello, and the pay-

ments thus set aside shall be divided and distributed in conformity with the decision of The Hague Tribunal.

In case of the failure to carry out the above agreement, Belgian officials shall be placed in charge of the customs of the two ports and shall administer them until the liabilities of Venezuelan Government in respect of the above claims shall have been discharged. The reference of the question above stated to The Hague Tribunal will be the subject of a separate protocol.

And article 6 says:

ARTICLE. VI. All existing and unsatisfied awards in favor of Spain shall be promptly paid, according to the terms of the respective awards.

The Spanish claims preferred in accordance with the stipulations of article 1 of the protocol, that is to say, the claims not then already settled by diplomatic treaties or arbitration between the two Governments, and to be submitted to the mixed commission at Caracas, amounted on June 30 last to 161 in number, for a value of 3,557,422.28 bolivars. There existed, however, several the value of which was not mentioned, the appreciation and valuing of the damage suffered being left by the interested parties to the mixed commission itself. On July 3, 30 other claims were announced, to be presented in virtue of the three months' extension of time granted by the third arbitrator, in accordance with article 2 of the protocol of April 2.

None of these claims enjoys for its payment or liquidation any security on the Venezuelan national revenue, other than the 30 per cent of the La Guaira and Puerto Cabello customs receipts, set aside to that effect by article 5 of the protocol of April 2.

All of these claims should, therefore, be included in the distribution of the above-mentioned 30 per cent, as of right and equity and in view of the protocols of April 2 and May 7, such distribution being made equally between them and those of the other creditor powers admitted by the respective mixed commissions, proportionately to the amount of each claim and without preferential or separate treatment for Spain, but without preferential or separate treatment for the claims of any other interested power.

Besides these claims, Spain has not at present, as far as is known, any other claim pending against the Republic of Venezuela, nor payment owing to her on account of any other claim, with the exception of the so-called diplomatic debt, the arrears, interests, and capital of which should be paid and redeemed out of the 13 per cent of the 40 unities of the customs receipts of all the ports of Venezuela, according to article 6 of the protocol of April 2 last and former conventions, without the integrity of the said 13 per cent of the 40 unities being in any way affected or diminished by the collection of the 30 per cent of the La Guaira and Puerto Cabello customs.

This, notwithstanding, should the credits or claims of other powers already provided with securities or guaranties other than the 30 per

cent of the customs revenue of La Guaira and Puerto Cabello be in any way allowed by the arbitral tribunal to appear in the distribution of the said 30 per cent, His Catholic Majesty's Government reserves to itself the right of soliciting from the tribunal the same privileges which the latter may grant to the claims or credits of other interested powers already enjoying some other security, but none the less included in the distribution of the 30 per cent.

His Catholic Majesty's Government, in view of the considerations set forth above, ratifies the conclusions of its first case and, in consequence, again begs that the tribunal may please:

(1) To decide in the negative the question whether or not Germany, Great Britain, and Italy are entitled to preferential or separate treatment in their claims against Venezuela;

And

(2) To decide how the Venezuelan revenues mentioned in Article I of said protocols shall be distributed among all creditor powers so that no powers shall obtain preferential treatment.

Respectfully submitted to the tribunal by—

MARQUIS OF VILLASINDA,  
*Spanish Delegate.*

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#### APPENDIX.

His Majesty the King of Spain and the Republic of Venezuela, through their representatives, His Excellency Emillo de Ojeda, envoy extraordinary and minister plenipotentiary in Washington, and Herbert W. Bowen, the plenipotentiary of the Republic of Venezuela, have agreed upon and signed the following protocol:

#### ARTICLE I.

All claims owned by subjects of His Majesty the King of Spain against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the commission hereinafter named by the Government of His Majesty the King of Spain, or its legation at Caracas, shall be examined and decided by a mixed commission, which shall sit at Caracas and which shall consist of two members, one of whom is to be appointed by His Majesty the King of Spain and the other by the President of Venezuela.

It is agreed that an umpire may be named by the President of Mexico. If either of said commissioners or the umpire should fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. Said commissioners and umpire are to be appointed before the 1st day of May, 1903.

The commissioners and the umpire shall meet in the city of Caracas on the 1st day of June, 1903. The umpire shall preside over their deliberations and shall be competent to decide any question on which the commissioners disagree. Before assuming the functions of their office the commissioners and the umpire

shall take solemn oath carefully to examine and impartially decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the record of their proceedings.

The commissioners or, in case of their disagreement, the umpire shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation.

The decisions of the commission and, in event of their disagreement, those of the umpire shall be final and conclusive. They shall be in writing. All awards shall be made payable in Spanish gold or its equivalent in silver.

#### ARTICLE II.

The commissioners or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim and to hear oral or written arguments made by the agent of each Government on every claim. In case of their failure to agree in opinion upon any individual claim, the umpire shall decide.

Every claim shall be formally presented to the commissioners within thirty days from the day of their first meeting, unless the commissioners or the umpire in any case extend the period for presenting the claim not exceeding three months longer. The commissioners shall be bound to examine and decide upon every claim within six months from the day of its first formal presentation, and in case of their disagreement the umpire shall examine and decide within a corresponding period from the date of such disagreement.

#### ARTICLE III.

The commissioners and the umpire shall keep an accurate record of their proceedings. For that purpose each commissioner shall appoint a secretary to assist them in the transaction of the business of the commission. Except as herein stipulated, all questions of procedure shall be left to the determination of the commission or, in case of their disagreement, to the umpire.

#### ARTICLE IV.

Reasonable compensation to the commissioners and to the umpire for their services and expenses, and the other expenses of said arbitration, are to be paid in equal moieties by the contracting parties.

#### ARTICLE V.

In order to pay the total amount of the claims to be adjudicated as aforesaid, and other claims of citizens or subjects of other nations, the Government of Venezuela shall set apart for this purpose, and alienate, to no other purpose, beginning with the month of March, 1903, 30 per cent in monthly payments of the customs revenues of La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decision of The Hague Tribunal.



In case of the failure to carry out the above agreement Belgian officials shall be placed in charge of the customs of the two ports and shall administer them until the liabilities of the Venezuelan Government in respect of the above claims shall have been discharged. The reference of the question above stated to The Hague Tribunal will be the subject of a separate protocol.

ARTICLE VI.

All existing and unsatisfied awards in favor of Spain shall be promptly paid according to the terms of the respective awards.

Done in duplicate at the city of Washington the 2d day of April, 1903.

[L. S.]

HERBERT W. BOWEN.

[L. S.]

EMILIO DE OJEDA.

## COUNTER CASE OF THE NETHERLANDS AND OF SWEDEN AND NORWAY.

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### A.

OBSERVATIONS ON THE DOCUMENTS SUBMITTED TO THE TRIBUNAL BY THE AGENTS OF GERMANY, GREAT BRITAIN, AND ITALY ON OCTOBER 18, 1903.

I. Nothing in the aforesaid documents goes to show that existing international law does recognize the privileged treatment now claimed by Germany, Great Britain, and Italy. The pretention of the so-called blockading powers is altogether a new departure and at variance with the accepted principles.

Nothing in the "compromis" of May 7, 1903, entitles the tribunal to introduce into international law a new doctrine.

The tribunal has to give its decision according to existing international law.

II. The aforesaid documents fail to adduce one single precedent for the claim of the blockading powers.

III. The documents do not in the least weaken the Chinese indemnity precedent, which disproves the pretension of the blockading powers.

Another instance in which measures of coercion taken by one power against another benefited third parties from whom, nevertheless, no claim was made by the victorious power as an offset to the benefit received, occurred after the last war between Russia and Turkey. By the treaty of Berlin, of July 13, 1878 (arts. 24, 25, and 26), Greece obtained a rectification of frontiers, Austria was allowed to occupy Bosnia and Herzegovina, and Montenegro acquired some new territory.

Against these three powers Russia did not put forward any pretension to preferential treatment. Russia acted similarly with respect to Great Britain when the Sultan of Turkey assigned the island of Cyprus to be occupied and administered by Great Britain.

IV. Unable to quote precedents and unquestionable expressions of opinion by generally recognized authorities on international law, the aforesaid documents lay great stress on equity.

It seems, therefore, to become the duty of the agent of the Netherlands and of Sweden and Norway to examine in how far the "compromis" of May 7, 1903, allows equity, in itself, to carry such weight.

In this line of thought attention is called to the fact that the "compromis" does not mention the word "equity." It simply says that "the question of preferential or separate treatment shall be submitted for final decision to the tribunal at The Hague," and this wording has been chosen by the contracting parties with the knowledge that the arbitration treaty of The Hague, to which the Permanent Court of Arbitration owes its existence, says in its article 15:

*L'arbitrage international a pour objet le règlement des litiges entre les Etats par des juges de leur choix et sur la base du respect du droit.*

Article 15 of The Hague treaty does not say, "du droit et de l'équité."

The omission of the word "equity" in the compromise is the more striking as in other arbitration arrangements signed by Venezuela, the word "equity" does actually occur. Article 3 of the convention of January 19, 1892, between Venezuela and the United States of America says distinctly:

The commissioners appointed by the President of the United States of America and the President of the United States of Venezuela shall meet in the city of Washington at the earliest convenient moment within three months from the date of the exchange of the ratifications of this convention, and shall proceed to the selection of a third commissioner. When each commissioner shall have been chosen, either by agreement between the two first named or in the alternate manner hereinbefore provided, the three commissioners shall meet in the city of Washington at the earliest practicable moment within five months from the date of the exchange of the ratifications of this convention, and shall subscribe at their first act a solemn declaration to examine and decide the claim submitted to them in accordance with justice and equity and the principles of international law.

So, in 1892, the contracting parties stipulated for the application of equity conjointly with international law. In 1903 they stipulated for less. The "compromis" of May 7, 1903, does not go as far as the "compromis" of January 19, 1892. The only possible conclusion is that the contracting parties of May 7, 1903, did not want to go as far as the contracting parties of January 19, 1892.

Likewise the protocol signed at Washington on February 28, 1903, by the Dutch and Venezuelan plenipotentiaries says in article 2:

The commissioner or \* \* \* the umpire shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation.

While pointing out this difference to the tribunal, it is not contended by the agent of the Netherlands that existing international law excludes altogether the application of principles of equity. On the contrary, the agent of the Netherlands and of Sweden and Nor-

way recognizes fully that international law has given due consideration to the principles of equity in gradually developing its doctrine on various subjects. But it is contended that just because there is already sufficient equity in existing international law the pretension is inadmissible that equity may stand alone for "jus gentium," and may by so doing modify existing "jus gentium."

V. Moreover, it is denied that the principles of equity, as the blockading powers construe them in support of their claim, would lead to a just decision of the tribunal. At the mouth of the cannon the blockading powers have obliged Venezuela to set aside, for them alone, not less than £11,000 and 4,529,070 bolivares, in payment of "first-rate claims" and "satisfaction of the point of honor." By so doing the blockading powers have diminished the available assets of Venezuela, and thus diminished the assets out of which the so-called peace powers expected that their claims would be paid. The peace powers have, therefore, by the action of the blockading powers suffered a direct and immediate loss to the above-mentioned very considerable amount. It is left to the wisdom of the tribunal to appreciate whether in equity—if equity, standing alone, is admitted to be taken into consideration—the peace powers do not have a just claim against the blockading powers for the said amount, not to mention here the damage done by the blockade to the trade of the peace powers.

Finally it is denied that there can be any equity in the pretension that one person may be at the same time—

(1) Privileged creditor for "first rate claims," or on account of the point of honor;

(2) Generally privileged creditor on account of a blockade; and besides,

(3) Possessor of the privileged claims mentioned in article 3 of the protocols of February 13, 1903.

Equity embraces sometimes a great deal, but this seems going rather far.

VI. The agents of the blockading powers share the opinion of the agent for the Netherlands and for Sweden and Norway that analogy with the principles of civil law might be taken into consideration in this case. The examples quoted by them seem, however, to be more or less irrelevant. In the opinion of said agent the present case is similar to the following: One among several creditors causes the common debtor to be imprisoned in order to obtain payment of his claims. After a while he releases the prisoner, who consents to pay some of these claims, but who does not pay them all. Now, do the remaining unpaid claims of this creditor outrank, after these events, all the claims of other creditors? And is the first creditor (who caused the imprisonment) entitled to preferential treatment for his unpaid claims to the detriment of the other creditors?

As the matter stands the blockading powers did not take possession of any property of the Venezuelan Government, except some Venezuelan war ships of comparatively small monetary value.

Taking together what is said in the documents in this line, we find that their assertions have principally reference to the following two points:

(a) The blockading powers, it is said, acted as "*negotiorum gestores*" for the peace powers. But the blockading powers fail to prove that the peace powers, without the interference of the blockading powers, would not have themselves settled their respective questions with Venezuela. The peace powers are fully justified in saying that this is the case; that there was, as far as they were concerned, no necessity for a blockade; and that if they had chosen to undertake measures of coercion their navies would have been fully able to do so.

There existed not the least necessity for any action as "*negotiorum gestores*." And why undertake an action as "*negotiorum gestores*" when it was so easy for the blockading powers to have ascertained whether or not the peace powers approved of it.

One of the necessary elements for the existence of "*negotiorum gestio*" is absence of the person in whose behalf the "*gestio*" takes place. Now, the Netherlands were not absent from Venezuela during the blockade. They had their diplomatic representative at Caracas, and they had Dutch men-of-war in the Caribbean Sea.

The plea of having acted as "*negotiorum gestores*" is entered too late. On page 16 of the "Italian case" (last paragraph) it is confessed that "the purpose of the blockading powers was avowedly to obtain satisfaction for their own claims alone."

Besides, even if the blockading powers were entitled to call themselves "*negotiorum gestores*," the peace powers would be entitled to point out to the tribunal that they are far from having profited by said action. The action of the blockading powers has even injured the interests of the peace powers, because it has diminished (as above shown) the financial assets of the common debtor to the exclusive profit of the self-styled "*negotiorum gestores*."

(b) The blockading powers assert that the blockade was the cause of Venezuela's consent to arbitrate with the peace powers. From this assertion they seem to deduce that the legal "*causa*" of the protocols signed by Venezuela with the peace powers was the blockade.

This contention appears to be at variance with the doctrine of the codes of most civilized nations about "*causa*." According to said doctrine, whatever might have been the more or less remote and more or less direct reasons of the parties for entering into a contract, from the instant that the decision is taken the free will alone of the contracting parties becomes and is the legal "*causa*" of the contract.

Consequently the peace powers are justified in saying that the legal

"causa" of their protocols with Venezuela is nothing but the free will of Venezuela. This point of view agrees in every respect with the facts of the case.

VII. The blockading powers believe that they are entitled to preference in consequence of the blockade notwithstanding that the blockade, as has been shown, is not the legal "causa" of their claims.

The undersigned agent's contention is that the blockade, being a measure of war, can not as such create any right. Its effects, therefore, can not extend beyond what has actually been acquired on the day of its expiration.

The blockading powers obtained by the protocols, which put a stop to the blockade, the advantage that the question of preferential treatment is to be decided by the tribunal. But they have thereby not acquired the advantage that the tribunal should be authorized to view the blockade as something out of which any right may be deduced. The tribunal's decision must evidently be based on reasons other than those arising from the blockade.

Furthermore, in the protocols of May 7, the blockading powers could even not obtain the insertion of a provision that the expenses of the blockade should be refunded by Venezuela. This fact goes to show that, at the moment of the signature, it was the intention of the contracting parties to have the question of preference decided by the tribunal without regard to a blockade that then belonged to the past.

It would seem that the expenses necessary to enforce the blockade should have come first in the protocols. As they were altogether eliminated from the settlement, it is clear that the blockade itself has likewise been eliminated, and may not now throw any weight in the balance of the present arbitration proceedings.

VIII. In the documents submitted to the tribunal by the blockading powers the serious character of their claims against Venezuela is strongly emphasized.

Without going into details, it may be recalled here that the grievances of the Netherlands against Venezuela were not less serious. They equally included the seizing and confiscation of ships and the maltreatment and imprisonment of guiltless persons, not to mention the nonpayment by Venezuela of the never-contested claims of the Netherlands for postal services to an amount of more than 397,000 francs. The same may be said about the Swedish and Norwegian claims, among which there even occurs one for the killing of the captain of a Norwegian steamer (the *Jotun*), when in June, 1902, said steamer was willfully fired upon by a Venezuelan gunboat.

IX. According to the "cases" of the blockading powers, the claims of the peace powers are so considerable that, if they are to rank equally with those of the blockading powers, the 30 per cent of the



receipts at the custom-houses of La Guaira and Puerto Cabello are obviously inadequate to provide for the liquidation of the claims of the blockading powers within a reasonable time.

The undersigned agent begs leave to observe that the claims of both the blockading and the peace powers are calculated at about £1,900,000. The annual receipts at the aforesaid custom-houses is estimated at about £213,000. Venezuela would therefore be able to meet the demands of all its creditors, with interest, in perhaps ten or eleven years. This can not be called unreasonable when we bear in mind that, by the arrangements with China after the Boxer movement, China is allowed forty years to pay off the indemnity it promised to give.

X. On page 7 of the British case the tribunal is reminded that the British Government pointed out that the other creditor powers had taken no steps to enforce their claims.

This statement raises the question whether peaceful methods are utterly to be disregarded, and whether diplomatic action may not be called a step to secure payment. Simultaneous diplomatic efforts, with the same object in view, by half a dozen powers, may be supposed not to remain without some effect.

On the same page it is intimated that the offer of security by Venezuela was procured solely by the action of the blockading powers.

The above assertion is not proved, and the peace powers may affirm that their exertions contributed to the decisions of President Castro's Government. Mr. Bowen's instructions to negotiate with all the interested powers are conclusive on this point.

XI. Likewise the correctness may be challenged of the statement (same page) that "the other creditor powers were not then in a position to exert any such pressure on Venezuela."

If the peace powers had chosen to follow the example set by the blockading powers they could have taken war measures previous to February 13 and previous to the cash payments for the so-called first rank claims. The United States of America, for instance, had a whole squadron available. The Netherlands had three men of war in the Caribbean Sea. France could easily have detailed ships against Venezuela.

XII. The British case culminates in the contention (p. 21)—  
that a neutral is not entitled to interpose between the successful and the unsuccessful belligerent, and to demand, as of right, to share in the fruits of the victory on the ground that he too had claims against the vanquished, although he took no steps to enforce those claims, and had not protested against the action taken by the other belligerent to enforce his claims.

But did the peace powers really interpose between the blockading powers and Venezuela? They only negotiated for the settlement of their own claims.

And was Venezuela really a belligerent? It offered no warlike resistance.

Whatever might be the tribunal's opinion on this point, the tribunal will bear in mind that the Netherlands and Sweden and Norway do not want to share in the fruits of the so-called victory. They only pretend that they are entitled to the fruits of their peaceful exertions, and they do not see what right the blockading powers have to partially deprive them of the same.

## B.

Summing up, the undersigned agent feels bound to say that, in his opinion, the documents presented to the tribunal on October 18, 1903, fail to prove the claim of Germany, Great Britain, and Italy to preferential treatment.

He thinks the motives set forth in support of his petition to the tribunal, of the same date, remain unshaken.

He therefore maintains his conclusions, and he requests again that it may please the tribunal—

(1) To decide in the negative the question whether or not Germany, Great Britain, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela; and

(2) To decide that in the distribution among the creditor powers of the 30 per cent mentioned in the three protocols of May 7, 1903, the claims of the Netherlands and of Sweden and Norway shall be treated on a footing of equality with the claims of the other interested powers "so that [as it is said in the protocols] no power shall obtain preferential treatment."

The undersigned agent is moreover convinced that the tribunal, when, in virtue of Article I of the protocols of May 7, 1903, it decides how the 30 per cent of the custom-house revenues at La Guaira and Puerto Cabello are to be distributed, will of course distribute said revenues in such a manner as to provide that the balances remaining due by Venezuela to each of the interested parties at the end of each year may bear, out of said revenues, interest at such rate as is usually allowed in international awards.

In addition the undersigned agent requests that, if the tribunal finds for the peace powers, it will, as to costs, decide according to the principles of law generally followed in rejecting claims.

Respectfully submitted.

WECKHERLIN,

*Agent of the Netherlands and of Sweden and Norway.*

THE HAGUE, *October 31, 1903.*



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PART VIII.

Oral Arguments on Behalf of the United States,  
Great Britain, and Germany.

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## ARGUMENT OF WAYNE M'VEAGH ON BEHALF OF THE UNITED STATES.

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### MEETING OF OCTOBER 3 AND 5.

**MAY IT PLEASE YOUR HONORS:** I beg you to believe that I fully appreciate the courtesy of the court and of all the counsel in affording me this early opportunity of expressing in oral argument the views entertained by the Governments of Venezuela and the United States of the controversy which has been submitted for your decision.

We congratulate ourselves that we are enabled to present this controversy to the three learned and distinguished arbitrators who have been selected by His Imperial Majesty the Emperor of Russia to hear and decide it. The longer one lives in the world the more assured one feels that men very rarely secure the high regard and confidence of the community in which they live without deserving it; and each of you, in your way and place, has won and enjoys that regard and confidence.

We are also fortunate in our opponents. They worthily represent the bar of Great Britain, the foremost in juridical learning in the world, and with them are associated learned representatives of the jurisprudence of Germany and of Italy. We are also fortunate in our associates who represent those creditor nations whose contention will be the same as ours; and I am especially fortunate that the President of Venezuela and the President of the United States, acting in entire accord, have supported me by the two associates who sit side by side. Mr. Bowen is the diplomatic representative of the United States in Venezuela, and he has achieved the difficult task of thoroughly safeguarding the interests of his own country and at the same time securing the absolute confidence of the Government to which he is accredited. He enjoys the confidence of both Governments to such an extent that his Government acceded gladly to the request of the Government to which he is accredited that he should be invested with the fullest and amplest powers to negotiate with the blockading powers a settlement of the acute and dangerous situation then existing. How he settled it is known to all, and it is his happy fortune that he is young enough to look forward to other achievements even, if possible, more creditable. There is also associated with me in this case a gentleman occupying one of the most honorable and important offices in our coun-



try—that of the responsible legal adviser of the Department of State of the United States. In that position Judge Penfield has won and holds the confidence of Secretary Hay by his discretion, his intelligence, and his fidelity. I speak, therefore, not only for myself, but for my two distinguished associates as well, and I speak not only for the Government of Venezuela, but also for the Government of the United States. We are here representing both countries, and the Government of the United States after careful consideration adopted the preliminary examination presented on behalf of Venezuela, reserving only the privilege of adding anything further which the course of the proceedings may render necessary.

The Governments which we represent have conceived, wisely or unwisely, that the controversy now submitted to you is of the greatest possible importance for the future welfare and peace of the world; and I propose to discuss it broadly and fully and, I trust, in a spirit not unworthy of its character. What is that question? We have not been able to regard it in the light in which many of our learned opponents have seemed to consider it, nor have we been able to discover that it turns at all upon any dispute as to facts; as for the facts, we rely entirely upon official publications.

As soon as the protocols were signed, on May 7, 1903, we were charged with the duty of presenting to this tribunal the views of the Governments of Venezuela and the United States. Immediately after they were signed, May 8, 1903, Venezuela presented her respectful request to the Emperor of Russia to designate the arbitrators who were to decide it; and assuming that the other signatory powers would discharge their duty with equal promptness, we were directed to prepare the case we intended to submit and to come here in ample time to exchange cases before the tribunal met, so as to enable the tribunal, when it did meet, to proceed without further loss of time with the oral discussion. We came here accordingly, but, owing to circumstances to which it is not necessary now to refer, the tribunal was only completed and able to meet on the 1st of October instead of the 1st of September. As soon as we learned the good news that the third member of the tribunal had been appointed we offered at once to exchange cases with our opponents. They were quite within their right in declining our proposal; but assuming that it would be accepted we inclosed copies of our case, with all the evidence upon which we rely, to the secretary-general of the court, to be presented to you. We did not contemplate, owing to the absence of disputed facts from our point of view, that this controversy would require the same order of procedure as many international arbitrations had required, although it is undoubtedly to be regretted that some order of procedure was not embodied in the protocols. It was impossible, however, in the earlier cases before this tribunal to foresee every-

thing, and we took it for granted that on the 1st of September the cases would be exchanged and the oral discussions would soon thereafter commence. In that expectation we were disappointed, but we have now presented our case, and all the evidence upon which we rely, to each of the counsel, as well as to each of you, and by your courtesy and their courtesy I am now at liberty to discuss the question for your decision. It is a question of international law, as such law exists since The Hague conference adjourned and its action was ratified by the parties represented in it. Are Great Britain, Germany, and Italy entitled to preferential treatment in the payment of their claims against Venezuela as demanded by them, or are all her creditor nations entitled to equality of treatment in the payment of their claims?

That question, it seems to us, depends largely upon the meaning of this tribunal. There is no desire whatever on our part to exaggerate in the slightest degree the character of this tribunal, or the far-reaching consequences of The Hague conference itself; but the latter did make, undoubtedly, a very great change in the situation of the civilized nations of the globe and their action toward each other when engaged in controversies which might eventuate in war. We certainly desire to consider the question in no narrow spirit, nor to press for any undue advantage; and I earnestly hope that if at any time during my argument I shall seem to any member of the tribunal to put improper weight upon any consideration, to exaggerate any argument which I may suppose is in our favor, or to undervalue in any degree any argument which I may suppose is against us, your honors will feel at liberty to ask any question or make any correction which you think the argument requires.

Your decision, as we understand this controversy, will require you to decide between equality of treatment for all independent nations and preferential treatment for Great Britain, Germany, and Italy over all others, and in making that decision you will of necessity have to pass upon the respective merits, in view of the facts laid before you, of two different courses of action, that of resorting to the methods of war against Venezuela, the seizing and sinking of her ships, the blockading of her ports, and the bombarding of her forts, as was done by the three great nations claiming preferential treatment of their claims, and the peaceful methods pursued by the other creditors of Venezuela in urging payment of their claims, including the United States, Mexico, France, Spain, Sweden and Norway, the Netherlands, and Belgium. This question, as you will at once appreciate upon the mere statement of it, can not depend for its proper solution upon the doctrines of international law as heretofore interpreted and accepted, strongly as those doctrines have always emphasized the equality of all independent States, nor can it be hoped that many precedents can

be found, even with the most exhaustive search of the relations of independent States, which precedents could be of essential service to you in reaching your decision. Indeed, the only precedent we have been able to find is the recent case of China, where a great indemnity was extorted by allied nations by force, but the indemnity thus extorted was distributed upon terms of exact equality among all the nations presenting claims, whether they joined in the march to Peking or not.

That, we submit, is a precedent of very great value. Each of the three great nations now before this tribunal denying the right to equality of treatment to the other creditor nations of Venezuela, participated in that march and shared in the indemnity extorted by force. Each one recognized the principle that all States having claims against China were to be equally treated in the distribution of the indemnity which was extorted. We have been unable to discover the slightest difference in principle between the two cases. In that case, as in this, money was extorted in payment for alleged losses by the use of force, and in that case when the money thus extorted was to be distributed, Great Britain, Germany, and Italy assented to the proposition for which we contend, that the distribution should include, upon exactly equal terms, the nations which did not share in the exercise of the force which produced the fund. Of course, such equality of treatment is the inherent right of independent nations, and that is what we are asking, while our opponents are contending that by making war upon Venezuela, and, by war extorting the fund to be distributed, they have entitled themselves to an award of merit from this tribunal in the form of preferential payment of their claims.

Now, in the forum of international law all sovereign States, weak or strong, small or great, stand upon the footing of absolute equality, and when, therefore, three nations come forward and say that we are entitled to the preferential treatment over seven nations, it must be that they are going to follow that statement by convincing you that their conduct has been so meritorious that they are entitled to an award of merit for it, and that, relatively speaking, the conduct of the peace powers, as they have been called in this controversy, has been so lacking in merit that there is a proper basis for discrimination against them in the distribution of the fund to be distributed.

As the allied nations are appearing here demanding an award of merit at your hands, it is, we think, of the utmost possible importance to consider what you are, what the history of your creation is, and what you represent.

When the blockading powers requested President Roosevelt to act as arbitrator, notwithstanding the considerable pecuniary interests citizens of the United States had in securing equality of treatment, they must have recognized that, considerable as that interest in this

controversy was, it is as nothing compared with the interest the United States has in the proper decision of the question of international law as enlarged and modified by The Hague conference now at issue. Upon that decision great and vital interests of many nations may depend, while upon how this fund may be distributed no great or vital interest can depend. It is not too much to say that the Government of the United States would have hesitated long before invoking this tribunal to decide whether some claims of American citizens should be paid in advance of some claims of British citizens, or whether they should be paid on a basis of equality. That contention is important to the individual claimants, but it is not of great importance to the United States or to Great Britain; but it is of great importance to Venezuela and the United States to know whether this tribunal is at liberty to grant an award of merit to the blockading powers for making war upon Venezuela under the circumstances then existing.

It is for that reason that I desire to emphasize at the very outset of my argument the story of the creation of this court and the ethical quality which permeated all the proceedings culminating in its creation; and our desire to do so is great because we believe such emphasis is indispensable to lifting the spirit of our discussions and of your deliberations above the pride of martial strength and the willingness to make aggressive war, which is a natural consequence of such strength, into the higher and serener air where equality is always recognized as equity, the air of that international forbearance and long-suffering which seeks for righteousness and, if possible, for peace in all the relations of the peoples of the earth; and in claiming equality of treatment for all the creditor nations of Venezuela we wish to emphasize as strongly as possible the essential moral difference between unnecessary and aggressive warfare waged by strong nations against weak nations for the selfish objects of intimidation, of extortion, or of conquest; and the necessary and heroic warfare waged unselfishly for the unity of kindred peoples, or in defense of national honor and independence, or for the maintenance of Christian civilization and the true welfare and progress of mankind.

War may be just or unjust. War may be necessary or unnecessary. We know as well as you know that emergencies arise in which the noblest spirits are summoned to die for their country, and we have no desire whatever to eliminate the element of even physical courage from the human character. All we desire to do is to insist upon the broad, plain, feasible demarcation which separates unjust and unnecessary war from just and necessary war; and such, as we understand it, was the motive which influenced the august sovereign to whom we owe the initiation of The Hague conference in asking the

civilized nations to assemble here by their chosen representatives. He said, and it is to be taken for granted, as the world has always taken it for granted, that he meant exactly what he said:

In the conviction that this lofty aim is in conformity with the most essential interests and the legitimate views of all powers, the Imperial Government thinks that the present moment would be very favorable for seeking, by means of international discussion, the most effectual means of insuring to all peoples the benefits of a real and durable peace, and above all to put an end to the progressive development of the present armaments. The intellectual and physical strength of the nations, labor and capital, are for the major part diverted from their natural application and unproductively consumed. Hundreds of millions are devoted to acquiring terrible engines of destruction, which, although to-day regarded as the last word of science, are destined to-morrow to lose all value, in consequence of some fresh discovery in the same field. National culture, economic progress, and the production of wealth are either paralyzed or checked in their development. This conference should be, by the help of God, a happy presage for the century which is about to open. It would converge in one powerful focus.

May it please your honors, you are that focus. You have been converged here to represent the efforts of all states which are sincerely seeking to make the great idea of peace triumph over the elements of trouble and discord. It would, at the same time, confirm their agreement by the solemn establishment of the principles of justice and right, upon which repose the security of states and the welfare of peoples.

Now, the significant feature of this invitation is that it did not proceed from Holland, with a powerful neighbor on her border, nor from Belgium, with a powerful neighbor on her border, nor from Switzerland, surrounded by powerful neighbors, but from a ruler of the greatest military power on earth, a ruler more free from constitutional limitations than any other and followed wherever he leads by a population as numerous, as brave, as loyal, as ever followed the oriflamme of any leader. Emanating from such a source and breathing such a spirit, the proposal was lifted out of the regions of commercial debate, away from discussions about money, away from all forms of disputes and arbitrations which concern pecuniary gain, into the higher atmosphere where may properly be regarded only those considerations and principles which, as His Imperial Majesty declared, "make for the security of governments and the welfare of peoples."

How did the nations meet that bugle call to ascend to a higher platform in international relations and to lay the foundations of a nobler system of international law than had yet been recognized in the world? The British Government accepted the invitation at once, through Mr. Balfour, then in charge of the foreign office, in the absence of Lord Salisbury, Mr. Balfour saying that the British Gov-



ernment most warmly sympathized with and approved "the pacific and economic objects which His Imperial Majesty has in view;" and the Government of the United States also at once accepted the invitation in the most cordial terms possible. The British Government sent to His Imperial Majesty this message, which must have given him great pleasure: "This sympathy is not confined to the Government, but is equally shared by popular opinion in this country, as has been strikingly manifested since the Emperor's proposal has been made generally known, by the very numerous resolutions passed at public meetings and societies in the United Kingdom," thus showing that the appeal not only commended itself to responsible governments, but they were glad to testify that it met also the approval of the people they represented.

The chargé d'affaires of the Government of the United States at St. Petersburg wrote that the novelty of the proposal was its—

humanitarian aspect looking toward a future universal peace which, while it has long been the dream of philanthropists, has never before, I believe, been recognized as an attainable end, even in the distant future, in the materialism which governs state policies and international relations. As the law of force has heretofore reigned supreme, it has now become a subject of practical discussion by responsible sovereigns, statesmen, and diplomatists whether, in the words of the Emperor of Russia, the principles of justice and right may not take its place.

I wish always to emphasize the fact that in pleading for this humanitarian aspect we do not class ourselves with dreamers or idealists, with men who close their eyes to the practical side of life, but with statesmen, with rulers, with diplomatists, with soldiers, with sailors, for it was such men whom this call assembled in this ancient and historic city; and it is necessary to speak of the ethical character of the question now before you, because it was the ethical basis alone which gave value to the proposal of His Imperial Majesty, and which enabled it to result in the far-reaching consequences which we are engaged to-day in discussing.

I need not trouble you, as it is fully presented to you in our case, with the character of the responses of the other governments or the action of the Russian Government itself. It is enough to say that explicit and cordial declarations of approval were heard from every quarter, and the conference was therefore most distinctly and authoritatively committed, by the very character of its existence, to endeavor to substitute for the right of the stronger to make war, in order to despoil the weaker at its own mere will and pleasure, "the principles of justice and right upon which repose the security of states and the welfare of peoples." It was unquestionably a sublime mandate. It was given at what was believed to be an auspicious time, just as the twentieth century of the Christian era was beginning and nineteen



hundred years after "peace on earth and good will to men" was first announced as the true relations of men to each other. It emanated from the sovereign of the largest military power, with resources for increasing its military strength unrestricted by constitutional or parliamentary limitations. It assembled 100 men, not dreamers of impracticable dreams, but fit representatives of the world's statesmanship, diplomacy, jurisprudence, and war, sensible and practical men of affairs accredited by 26 independent nations and authorized to speak in their name; and it is only just to declare that the results of their labors were eminently worthy of the sovereign to whose initiative they owed their assembling, to the mandate they had received, and to their own well-earned renown.

Representing, as we do, in this controversy a weak South American republic, it may be permitted to us to state the great and profound regret felt by all the republics of the American continent that they were not all equally invited to take part in a conference of such world-wide import. The fact that of those great and growing republics only the United States and Mexico were represented at the conference was chiefly to be regretted because the delegates present at it were denied the privilege, as well as the advantage, of hearing the views entertained by the statesmen and diplomatists of Central and South America upon many interesting and important questions of international law and the usages of nations, as well as their possible improvement along practical lines. Those republics, however, very wisely declined to take umbrage at their exclusion from this first great council board of the nations, and they resolved to avail themselves of the advantages of this tribunal, although it was constituted without consultation with them. By the terms of the conventions themselves and by her own declaration of willingness to conform to them, Venezuela has not only entitled herself to be heard by you on an exact equality with her great and powerful opponents, but she is to be credited, until the contrary appears, with an unusual devotion to the conclusions which the conference reached.

The proceedings of the conference are well known to all the members of this court, and you will recall the inspiring words with which the minister of foreign affairs of the Netherlands welcomed the delegates, as you will also recall the elevating words of Baron de Staal in assuming the presidency of the conference. He said:

The name of peace conference, which the instincts of the people, anticipating a decision on this point by the Governments, has given to our assemblage, indicates accurately the essential object of our labors. The peace conference must not fail in the mission which devolves upon it. It must offer a result of its deliberations which shall be tangible, and upon which all humanity waits with confidence. The eagerness which the powers have shown in accepting the proposition contained in the Russian circular is the most eloquent testimony of the unanimity which peaceful ideas have attained. \* \* \* The very membership

of this assemblage is a certain guaranty of the spirit in which we approach the labor which has been confided to us. The governments are represented here by statesmen who have taken part in shaping the destiny of their own countries, by eminent diplomatists who have been concerned in great negotiations, and who all know that the first need of the peoples is the maintenance of peace. Besides, here there will be found savants who, in the domain of international law, enjoy a justly merited renown. The general and superior officers of the armies and navies, who will help us in our labors, will bring to us the assistance of their high competence. Diplomacy, as we all know, has for its object the prevention and the appeasement of conflicts between states, the softening of rivalries, the conciliation of interests, the clearing up of misunderstandings, and the substitution of harmony for discord. \* \* \* We shall also undertake in a special manner to generalize and codify the practice of arbitration, of mediation, and of good offices. These ideas constitute, so to speak, the very essence of our task. The most useful object proposed by our efforts is to prevent conflicts by specific means. \* \* \* The ties which unite all parts of the human family are ever becoming closer. A nation could not remain isolated if it wished. It finds itself surrounded by a living organism, fruitful in blessings for all, and it is and should be a part of this same organism. Without doubt rivalries exist. \* \* \* Such rivalry may do good, provided that above it all there shall remain the idea of justice and the lofty sentiment of human brotherhood. \* \* \*

The same lofty ethical idea was expressed by one of the members of this tribunal, M. de Martens. Indeed, it permeated every address made at the conference, and it was not astonishing that the conclusion of the labors of the conference called to such a high mission of justice and of peace should have resulted in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering the peace, the states at variance shall each choose a power to which they entrust the mission of entering into direct communication with the power chosen on the other side, with the object of preventing the rupture of pacific relations. During the period of this mandate, the term of which unless otherwise stipulated can not exceed thirty days, the states in conflict shall cease from all direct communication on the subject of the dispute, which is regarded as having been referred exclusively to the mediating powers, which shall use their best efforts to settle the controversy.

The conference then made these lofty and epoch-making declarations:

International arbitration has for its object the determination of controversies between states by judges of their own choice, upon the basis of respect for law.

In questions of a judicial character arbitration is recognized by the signatory powers as the most efficacious and at the same time the most equitable method of deciding controversies which have not been settled by diplomatic methods.

With the object of facilitating an immediate recourse to arbitration for international differences which could not be settled by diplomatic methods, the signatory powers undertake to organize a permanent court of arbitration, accessible at all times.

When this great pact of peace had been signed, M. de Staal determined that the whole result of their labors should remain in the same

high altitude to which the Russian Emperor had summoned the members of the conference, and he declared:

In the course of years I have seen the gradual growth and influence of moral ideas in political relations. This influence has to-day attained a memorable stage. \* \* \* Gentlemen, the first step is taken. Let us unite our efforts and profit from experience. The good seed is sown. Let us await the harvest. As for me, having come to the end of my career and the decline of my life, I consider it a supreme consolation to see the opening of new perspectives for the good of humanity, and to be able to look forward into the bright vistas of the future.

Great Britain, Germany, and Italy associated themselves with the other signatory powers in adhering to the foregoing declarations in favor of mediation, of arbitration, and of peace, which were signed July 29, 1899, and thus they stood committed by their voluntary action to giving practical effect, whenever opportunity offered, to those objects in their relations with all other nations.

We are now, therefore, prepared to consider how they discharged this obligation, and whether in a manner to entitle them to an award of merit from this tribunal or not. I do not care to discuss whether such seizing and sinking of her small vessels of war, such blockading of her ports against all commerce, neutral and other, and such bombarding of her forts as these great powers practiced toward Venezuela constituted a state of war or not. It is not necessary, for the purpose of this discussion, to consider the question of the possibility of a pacific blockade, as all the authorities upon international law agree that such a blockade must not extend to interference with the rights of neutrals to have undisputed access to the ports in question; and, indeed, Mr. Balfour declared in the House of Commons on December 18, 1902, that "of course a state of war existed between Great Britain and Venezuela, as you could not have a blockade effective against other nations except when a state of war existed." I do not wish unduly to emphasize the word "war" or use it for the purpose of creating the slightest misconception of what was done, but after the prime minister of Great Britain admits that "of course a state of war existed," it is not improper to say that it was warfare, and that they did make war upon Venezuela.

We are now at a point to properly consider another question, which is: What was the character of the diplomatic correspondence between these great allied powers and Venezuela which preceded the war?

It seems to us after careful consideration that no injustice will be done to either of the other blockading powers if we assume that the conduct of Great Britain may be regarded as fairly representative of the conduct of all of them. In the first place, as they became allies they stand or fall together, and each became distinctly, by the terms of the general demonstration, responsible for the acts of the others; but even if that were not so, it is hardly to be supposed that Great Britain

would exhibit greater harshness or less respect for the obligations she had assumed to the international law of The Hague conference than either Germany or Italy. There is nothing in her past history to warrant such an assumption, and therefore it is not unfair to confine ourselves to a discussion of the diplomatic correspondence between Great Britain and Venezuela as illustrating, for the purposes of your decision, how far she adhered and how far she departed from her proper line of duty before she entered upon the actual war which she waged in alliance with Germany and Italy. Of course if it should hereafter appear that in thus selecting the action of Great Britain by which to judge her allies, the slightest injustice is done to either of the other blockading powers, we will be very glad to make any correction, and we beg the tribunal to see that no injustice is done by the selection we have made of the diplomatic correspondence of Great Britain with Venezuela as illustrating the general course of conduct of the blockading powers. There is another reason why this selection should be made. The protocols having designated the English language as the official language of the proceedings, it was much easier for us to deal in detail with the diplomatic correspondence between Great Britain and Venezuela than with such correspondence between Germany and Venezuela, or between Italy and Venezuela. In the case of Great Britain, on her side it was carried on in the English language, and on the side of Venezuela in Spanish, which the English government has itself translated. And then there was another valid reason. Great Britain continued her correspondence with Venezuela down to the very moment of the declaration of war, whereas Germany ceased her correspondence, as far as we are able to discover, six months before the war began. The date at which Italy ceased her correspondence is not quite so clear, but it was some time before the outbreak of hostilities. So that, taking the British correspondence, we have at least a greater probability of putting ourselves precisely in the position which the parties themselves occupied at the moment when they resorted to force to extort payment of their alleged claims.

Let us therefore now carefully consider on behalf of the United States and Venezuela the diplomatic correspondence between Great Britain and Venezuela, which eventuated in war, as throwing light upon the decision you are required to render as to whether it was or was not a just and necessary war.

The Hague conventions were signed July 29, 1899, and on February 21, 1901, twenty months thereafter, the governor of Trinidad, an island belonging to Great Britain in the West Indies, reported upon an alleged outrage by officials of Venezuela upon alleged subjects of Great Britain. In dealing with the question of all the alleged outrages I rely exclusively for the facts upon the Blue Book published by Great Britain containing the correspondence with Venezuela, a

copy of which Blue Book we have furnished to each of you, as well as to each of the counsel in the cause. The island of Trinidad, it will appear, is a dependency of Great Britain, just north of the mouth of the Orinoco, the great river of Venezuela, and the two horns of the island almost reach the Venezuelan coast. This island has long been believed by the Government and people of Venezuela to be a refuge for two classes of unlawful enterprises, one being the promotion of insurrections in Venezuela, by lending assistance to insurgents, and thus encouraging operations against the authorities of Venezuela, and the other being the evasion of the customs laws by the smuggling of goods from Trinidad into Venezuela. Venezuela at the time of these alleged outrages was engaged in a life-and-death struggle against a powerful insurrection, under the leadership of General Matos. In that effort she not only needed the friendship of a power situated so close to her, but she needed all proper revenue from her custom-houses, not only to meet her ordinary expenses, but to meet also the extraordinary expenses devolving upon her in the suppression of the insurrection. That situation, and I do not wish to press it unduly or give undue weight to it, would almost necessarily lead to bitterness, to misunderstandings, and probably to unwise and ill-advised action on the part of Venezuela. There was this island close to her coast, belonging to a powerful maritime nation thousands of miles away, believed to afford a starting point from which to launch insurrectionary movements, and from which it was possible to conduct smuggling operations in Venezuela.

This weak, distracted Republic to-day possesses one of the most attractive territories on the globe. Watered by the most noble rivers, with every variety of climate, from the tropical coast of the sea to the ridges of the loftiest mountains, there are growing in her fertile valleys the products of many different lands. With her great coast line and her great rivers, she was especially exposed to such expeditions as she believed were organized in Trinidad. That is the situation with which Great Britain—powerful, civilized, intelligent—found herself confronted, and, without laying undue stress again upon the attitude of Great Britain, we say she ought to have known, and, knowing, she ought to have taken into account, the bitterness of feeling on the part of Venezuela owing to this situation. On the contrary, that bitterness is plainly shown to have been reciprocated by the authorities of Trinidad toward Venezuela.

Then, as if that was not enough to make their relations strained, there is a little uninhabited island, the ownership of which is in dispute, Great Britain and Venezuela both claiming it. It is a half-way house for smugglers and insurrectionists between Trinidad and Venezuela, called the island of Patos. This is the situation, or would have been the situation but for another element of bitterness on the



part of Venezuela. Attention has often been called to the boundary arbitration between Great Britain and Venezuela. That has been the subject of long, earnest, and fruitless entreaty by Venezuela to Great Britain, to submit the question to arbitration. For many years, in season and out of season, this defenseless country had been declaring to Great Britain: "You are encroaching continually upon our territory. Each year the territory claimed by British Guiana has been enlarged. Why will you not agree to an amicable arbitration and have the line between us amicably settled?" Great Britain said, "No, we will not," adding that it was territory she was entitled to occupy. But at last the situation became intolerable to the United States. The United States had, at the instance of Venezuela, more than once interposed an offer of good offices for arbitration, which Great Britain refused, until it became the subject of acute diplomatic controversy, and as a result of President Cleveland's message and the action of Congress in support of it, an arbitration was finally agreed upon to settle the boundary line between Great Britain and Venezuela; but the two great and powerful nations which confronted each other—Great Britain and the United States—made what would seem to be the mistake of choosing the arbitrators wholly from their own countries, not allowing this weak country a single representative upon it. Of course, it is easy to criticise what statesmen do when one is not responsible for the conduct of a controversy. So many elements enter in of which the person outside is ignorant that it is perhaps presumptuous to criticise it at all. The statesmen responsible for the peace of those two great countries may have found themselves so situated that that was the best possible solution which could be found. I do not say it was not, but it left a feeling of bitterness in the mind of Venezuela, and the award gave a considerable accession of territory to Great Britain, justly no doubt, but after all an award without Venezuela being represented on the tribunal which made it. Of course she assented to it, because she could do nothing else. I am not alluding to this for the purpose of passing judgment upon it or asking you to do so, but to show that it should naturally have been expected by Great Britain that the memory of it would be embittered with a sense of injustice.

**M. DE MARTENS.** As I presided over that arbitration, I desire to say that Venezuela was well represented by the two competent and distinguished arbitrators from the United States.

**Mr. MACVEAGH.** That is entirely true, but it is also true that Venezuela could not be expected to feel that she was properly treated while two citizens of her adversary sat upon the tribunal settling the boundary in dispute and no citizen of hers was allowed to sit upon it.



With these causes of dissatisfaction, with Trinidad and Patos so near, with the insurrection raging, with smuggling believed to be going on, we come to consider what was the conduct which this court had a right to expect from Great Britain, even if some aggressions had been made of some unimportant character upon some of her alleged subjects.

It seems to me that in such a situation the wise words of M. de Staal recur with ever-increasing force:

Diplomacy, we all know, has for its object the prevention and the appeasement of conflicts between States, the softening of rivalries, the conciliation of interests, the clearing up of misunderstandings, and the substitution of harmony for discord.

We do not wish unduly to press the vast inequality of strength between Great Britain and Venezuela, but it certainly is a proper element in considering what her line of conduct should have been. She is one of the most powerful nations of the earth, and she was confronting one of the weakest nations, then torn by internal commotion and needing every particle of strength she possessed and every dollar of revenue she could collect at her ports to maintain her own existence.

'Tis glorious to have a tyrant's strength,  
But tyrannous to use it like a giant.

And we insist that this disparity of strength ought to have impressed Great Britain with the need of great care to avoid causes of irritation, and the use of conciliatory methods in seeking to bring about the settlement of any claims she presented. This disparity in strength is clearly shown in the Statesman's Yearbook for 1903, an accepted authority in such matters, which details the great and efficient standing army of Great Britain, as well as her supreme control of the seas by her vast navy, while it reports that the army of Venezuela consists of 9,000 men, and her navy of 3 steamers, 2 sailing vessels, and some small gunboats; and the propriety of great forbearance in pressing doubtful claims by so powerful a nation against a nation so incapable of resistance ought, it would seem, to have been always recognized even before the high-sounding proclamation of the peace conference. Indeed, an English writer in the Nineteenth Century and After, for April, 1903, an English magazine of high character, says, speaking of the intervention of European nations in the affairs of the South American republics:

To justify such intervention, it would seem to be the duty of foreign states to observe certain rules which one and all of them have in the past been inclined to disregard, \* \* \* such as refusing to support by diplomatic action, and in the last resort by force, claims which, *prima facie*, are plausible, but which have never been examined thoroughly, or to press to the utmost demands which

may turn out, and which according to the experience of many mixed commissions do turn out, to be bad or much exaggerated, and which are in the end settled for a small sum.

The writer adds that "before such interference, the European nations ought to do away with all pretext for the charges, true or false, persistently made, that much smuggling has in past time been carried on." The writer then suggests that mixed commissions should be organized, to which such claims should be automatically referred, as they would help "to propitiate national pride and remove a grievance, for such the constant pressure from the outside is regarded." Such, it seems to us, are the wise and considerate methods which a mighty nation, just having signed the conclusions of the peace conference, might reasonably be expected to pursue in dealing with a weak and distracted people struggling to preserve their government from overthrow by revolutionary leaders seeking to destroy it; and it is not too much to declare that the course actually pursued was in the greatest possible contrast to the course which was reasonably to have been expected.

I wish to emphasize one fact. That is, that notwithstanding what I have read to your honors this morning of the conclusions of The Hague conference to which the allies cordially adhered, which conclusions declared that in controversies where there is no guaranty of settlement there should be mediation, or there should be at least a proffer of arbitration, that there will be found in all these controversies and disputes no word from this powerful and mighty nation of Great Britain proposing to this weak and defenseless sister in the family of nations mediation of any kind or character whatever, whether of the class declared to be desirable by the conference, the suggesting that these matters of controversy were proper subjects of conclusions of which it had just signed, or not; no friendly word arbitration; no friendly word intimating that the blessings of peace between Great Britain and Venezuela were of incalculable importance to the weaker power; no consideration of any kind for the weakness of Venezuela, and no allowance of any kind for the fact of the absorption of all her possible strength and of all her possible resources in the suppression of the insurrection then raging in the country. Indeed, there will be found in this whole record nothing but harsh demand followed by harsher demand, and harsh threat followed by harsher threat. One asks in vain, in reading it from the first word to the last, where does there breathe in all its pages the least resemblance to the spirit of the peace conference which constituted this tribunal? Where is there to be found the slightest allusion to the solemn declarations to which the allies had just affixed their names and given their approval? The answer must be that there is not anywhere to be found in the whole of these demands and threats, as printed in the

British Blue Book, the slightest sign of a desire for mediation or arbitration or of any recognition of the troubles and weakness of Venezuela as contrasted with the overwhelming power and strength of her great adversary.

While in the course of this statement it has been necessary to point out the failure of the British Government to offer mediation or arbitration to Venezuela, the fact has not been overlooked that the German Government, on July 16, 1902, six months before the war began, did make an offer of arbitration to the Government of Venezuela. The German Government well knew that Venezuela at that time was wholly engrossed in her efforts to suppress the Matos insurrection, and there was an interruption of all correspondence apparently for six months, when suddenly the alliance between Great Britain and Germany was formed, the fleets were dispatched, the ultimatums were delivered, and the war upon Venezuela was begun. If the alliance had been formed to make joint proffers in November, 1902, of the offer Germany alone had made in July for arbitration, it is reasonably certain that the offer would have been accepted; but the alliance was not an alliance for mediation or arbitration or peace, but for war. Yet there can be no doubt of the fact, and instances can be cited to show, that collective pressure and firm insistence would have brought about arbitration or settlement, as it did when Belgium, England, France, Germany, and Italy, on February 26, 1902, resorted to collective diplomatic action against the Republic of Guatemala and obtained a peaceable adjustment of the claims of their subjects, as recorded in the Foreign Relations of the United States for 1902, pages 569-580.

It was the principle of equality of treatment which guided the Venezuelan Government during all its negotiations with the allies at Caracas and at Washington. On February 13, 1903, Venezuela signed separate protocols for the reference to mixed commissions of the claims of the allies, subject to reservations of preferential treatment of certain claims, to which Venezuela submitted through force. On the 17th day of February, 1903, the United States and Venezuela signed a protocol for the submission of all unsettled claims to a mixed commission. This protocol contained provisions which simplified the procedure and the questions to be decided, and prescribed the currency in which the awards should be payable. It was intended to remove from the field of discussion some of the troublesome questions which might naturally arise from the omissions of the British, German, and Italian protocols. After the United States protocol had been signed the allies requested of Mr. Bowen the same treatment, and the plenipotentiary of Venezuela at once accorded the same treatment to the allies by making new protocols with them.

I labor, of course, in this argument under the disadvantage of not knowing the point of view of our learned opponents, and we appreciate how their learning and subtlety may well succeed in presenting considerations to this court which we can not foresee; but, exercising the best judgment we possess upon the situation as it is now presented to us, we confess ourselves wholly unable to understand how it can be seriously argued, considering the character of this tribunal and the history of its creation, that the manner pursued by the allies in dealing with the problems which were then confronting them can commend itself so highly to your approval as to justify you in declaring that it distinctly merits an affirmative preference over the policy pursued by the other creditor nations of Venezuela, which did not see their way clear to resort to war, in view of the then distracted and impoverished condition of Venezuela, in order to enforce the payment of their claims. For it is impossible, by any learning, or by any subtlety, or by any ability, however great, to confuse the question now presented for decision. That question can never be other than this plain and simple one: Has the conduct of the allies in making war upon Venezuela when they did, and in view of all the circumstances then existing, so merited the approval of this tribunal that it will accord them preferential treatment in the payment of the claims presented by them against that country over the claims presented by her other creditor nations, which did not under the circumstances then existing see their way to make war upon her?

It is not enough that the conduct of the allies in making war upon Venezuela was equally meritorious with the policy pursued by the other creditor nations in abstaining from war and in seeking to collect the claims presented by them by peaceful methods. Before you can award preferential treatment to their claims, you must declare their conduct to be more meritorious than the conduct of those nations which abstained from making war; for equality of treatment is the rule, and preferential treatment can only be accorded as an award of merit.

It is, of course, to be greatly regretted that Venezuela did not, when these demands were first made, repeat the same requests for arbitration she had so persistently and so vainly made for so many years in the boundary dispute. That would have been her wisest course to pursue, but she is not here asking this court to decree that her conduct in failing to do so is meritorious, which is what the allies are asking. So far from being meritorious, her conduct in so abstaining was very unwise, but she is able to offer as excuses, though not as justifications, for so abstaining the history of her fruitless beseechings for arbitration in the boundary dispute, the refusal to permit her to name from her own citizens a single arbitrator when arbitration

was extorted from Great Britain by the United States, and the all-important fact that her Government was required to devote all its attention and all its energy to terminate the formidable insurrection, against the constituted authorities, then distracting and devastating the country. Notwithstanding these persuasive excuses for her not suggesting arbitration, we do not for a moment contend that they would entitle her to claim, as the allies are claiming, that failure to request mediation or arbitration in the hope of averting war would entitle her to an award of merit from this tribunal. Indeed, I do not imagine that I could secure an affirmative decree that the conduct of Venezuela throughout this controversy merits the distinct approval of The Hague Tribunal. But her adversaries say that their conduct does merit such approval, and that is the only real question now before you. All nations indeed have a very serious interest in knowing that this tribunal judges to be wise and proper conduct for a great nation to pursue having claims against a weak nation, now that the provisions of The Hague conference have become a part of the law of nations. Then, too, it will no doubt be said, and properly and truly said, that Venezuela was an irritating neighbor to the governor of a dependency of a mighty world power thousands of miles from his own country and clothed with all her great authority, and that he would inevitably be annoyed, and justly annoyed, very often by the conduct of a distracted country like Venezuela, close to the island he is governing. But there is another consideration which ought always to be borne in mind by a great power dealing with a small and weak power, and especially if the weak power is a South American country. Those countries are apprehensive of the ultimate objects of demands upon them. Rightly or wrongly, they attach great importance to the literature with which portions of Europe and America are now flooded, declaring that it is the duty of some powerful state to take possession of them. It is not an idle chimera. I was delighted to read the other day the calm, statesmanlike declaration of Chancellor Von Bülow, absolutely denying the existence of any such purpose on the part of Germany. It is a very interesting communication he has made. But in Germany and also in the United States the commercial adventurer, the promoter of enterprises in foreign lands, links himself with the spirit of aggression in all the fighting and dominant races, and he is able to create a public opinion of sufficient gravity, not perhaps in the centers of responsible government, but in the literature of those countries, declaring that it is the duty of some strong state to conquer Venezuela. Even in the United States we are not exempt from it. We have persons declaring distinctly in public organs of great authority that Germany should be given a free hand to take Venezuela and Colombia, if she desires, and, if Germany will not do so,



the United States should do it, because there is so much money to be made there, and the possible profits are shamefully allowed to go to waste.

The quantity of literature upon this subject is really in a sense amazing, and since I came to The Hague I find a book has been published in London filled with the declarations of important persons in Germany—professors of universities and molders of thought—declaring that Germany needs a great fleet, and that she needs colonies in South America; and I found in an English magazine only last week an article by a person long resident in Germany saying that the professional class and other leaders of public opinion strongly advocate such a policy. Against all that I put Mr. Von Bulow's statement, and rest upon it. But you must not expect that the people of Venezuela can rest upon it quite as calmly as I do. Brazil finds that a German colony is settling in the southern part of their territory, and a most desirable class of settlers they are. They form a German colony, and Brazil may readily suspect that there is a plan to seize some portion of her territory. Meanwhile these advocates of aggression demand that Venezuela shall suddenly become as safe for the foreign investor as the United States is, and in default of such safety it is said that the strong, powerful, and wise governments of the earth should step in and suppress this people and govern them for their benefit and ours. Then there is another very serious apprehension—a corollary of the other. They are in danger of believing that the collection of debts by war is not practiced for the sake of the debts only, but is intended to be an entering wedge for their conquest. The correspondence between Great Britain and Venezuela shows that their statesmen—and there are statesmen in South America as well as elsewhere—insist that the denial to them of the right to treat foreign residents with the same measure of justice as their own citizens is meant to introduce, first, the right of diplomatic intervention, then the gunboat, and then the conquering army; and I beg you not to dismiss this proposition without serious consideration.

For myself, and I speak only for myself, I declare that the collection of bonded indebtedness by making war is, in my judgment, an absolutely indefensible practice. In the first place we know how the debts are created; we know the commercial and financial and promoting persons who seek these countries, and often by corruption of officials obtain concessions, contracts, and loans, and then unload the burdens upon the bowed backs of the toiling masses, generation after generation, and, as Lord Salisbury said, such persons, if British subjects, seem to expect that they shall make no losses in those countries, but have the securities they obtained indorsed by the British Government. For that is what it means. An American promoter, one can always use one's own countrymen as an example, goes to Caracas and



secures a concession to secure a waterworks, or a railway, or any other enterprise. He secures the terms he wishes, and then he may return home, leaving his part of the contract only partly complied with; and then he may say to the United States Government: Venezuela gave me this contract, and now I ask you to send a fleet there and compel compliance with it. Personal injuries to the citizen of a foreign state, anything that really infringes the security implied in saying *Civis Romanus sum*, may afford ground for action, and, if for such wrong reparation is denied, a resort to force may be justifiable, but not for the enforcement of contracts or the collection of debts, at least such is my opinion. In the United States it has happened more than once that unoffending Chinamen and Italians have become the objects of the senseless wrath of a mob and have been murdered. In such cases, beyond any doubt, their Governments have a right to demand and exact reparation for the wrong. But if some person seeking pecuniary gain secures a concession or a contract he may not be at liberty, in my opinion, to extort compliance with such concession or contract by resort to war. Of course in dealing with such questions it is quite impossible to lay down rules which are applicable in all cases, but it seems to me there is no more discreditable work in which great nations can engage than in trying to collect from weak nations alleged debts by force.

Take an instance from the United States. We have a great, growing, and rich State in our Union. It owes a very large sum of money to British bondholders. There is no question about the indebtedness. There is no pretense of taint upon the obligation. The State declines to pay it. Great Britain does not send her fleet. She embarks no soldiers. She sends no ultimatum. For many years those creditors have been asking that State to pay them their just debt. They continue to ask her. They are asking her now. Prominent American citizens are endeavoring to assist them by appealing to her moral sense, but no person has ever suggested that Great Britain should collect this just debt by force. Why, then, should she thus collect debts from weak States? If international law is to receive the sanction from this court which all true lovers of jurisprudence must hope, then one of its duties will be to see that the small States are treated with exactly the same justice and exactly the same principles of right as govern the intercourse of great nations with each other.

What could be expected when Venezuela found that in authoritative journals of public opinion the demand was made that she should be conquered and held as a dependency? The memory of the long wars of independence against Spain is still living in the hearts of the people, and while others may think their independence far less valuable to them than they suppose, it is not reasonable to expect them to entertain that notion. Great Britain, with an overflowing

treasury, with the greatest navy in the world, with a great army, was confronting Venezuela while she was trying to suppress an insurrection which taxed all her resources. I ought to say before going further that Venezuela is not alone in feeling apprehensive of an attempt at conquest. Mr. Drago, then minister for foreign affairs of the Argentine Republic, addressed a letter to the Secretary of State of the United States, pointing out in very clear, concise, and temperate language that this apprehension exists all through South America, and that the collection of debts by war must inevitably lead to conquest of territory, and that it is only the first step which costs. It is a very thoughtful state paper, worthy to have emanated from any European chancery, and Secretary Hay made a becoming and conservative reply to it. However unfounded such apprehensions may be, they are an element to be taken into account in dealing with the situation as it existed when this trouble first arose.

In view of all these circumstances, the irritation which it was reasonable to expect Great Britain would feel toward Venezuela found, it seems to us, most unreasonable and violent expression. Of course, the influential and financial interests possessing at present great political power in all the aggressive and fighting nations, as well as the fighting instincts of the people of such nations, combine to demand large armies and large navies, and they must sometimes be used when possessed; and while for more than an entire generation no great power has ventured to attack any other great power, every one of them has been at war, and some of them often, with some small and defenseless power, and has been engaged in despoiling it. It may be true that before the peace conference met there was no usage of international law which could be invoked to prevent Great Britain, Germany, and Italy from collecting claims, which had never been impartially examined, from Venezuela by war. But since The Hague conference, and since this court was constituted, a totally different situation is presented. I repeat, it may be true that before the peace conference met there was no usage or principle which had received the assent of the civilized nations of the world which could have been successfully invoked to prevent Great Britain, Germany, and Italy from assembling their allied navies in the harbors of Venezuela, and, while refusing to allow their claims to be examined, to demand, at the cannon's mouth, the immediate payment of such amounts as they saw fit to ask. But from the day the pact of peace was signed in this city by these three great nations, and an invitation was extended by them to all the nonsignatory powers to avail themselves of this tribunal, the situation was absolutely changed. Thenceforward they were bound to conduct themselves toward Venezuela in accordance with the principles they had themselves announced, and to act toward

her from the beginning to the end in the spirit which permeated the action of the peace conference; because at last the nations of the earth had reached a parting of the ways. I repeat, before the signing of that pact of peace and justice for the nations, there may have been no such rules to be observed, but from the moment it was signed then all was altered, and its letter and spirit became obligatory upon every civilized nation of the earth, for all the civilized nations had either signed it or had adhered to it.

Now if the spirit which permeated the peace conference is to be exercised in any case, surely it ought to be exercised in the collection of pecuniary claims. Why do I say that? Because such claims have had an evil repute for more than a generation. They are known in many cases to be incapable of bearing searching investigation before a judicial tribunal, they are known to be exaggerated, and several have been found to be absolutely unfounded. The United States was itself deceived in at least two cases, one was against Venezuela herself, in attempting to enforce claims which were subsequently found to be unfounded. She discovered herself used for the same purpose against Mexico, and even after the money had been received upon these unfounded claims she was required by her sense of justice to pay it back into the treasury of Mexico. The result has been that such claims are now generally submitted to mixed commissions, where both countries are represented and the claims are judicially examined and must meet the approval of a disinterested umpire before payment is demanded. A brief summary of the total number and amounts of claims demanded, and of the total amounts awarded by the five most important arbitral commissions to which the United States has been a party during the past forty years will illustrate the singular exaggeration practiced in these claims. Nothing is accidental in this world of ours. Not only the physical world, but the moral and political world follow just as inevitably their own inexorable laws. You sow wheat, and you reap wheat. You sow tares, and you reap tares. You sow military force against a weak and defenseless state, and you reap injustice. You sow doubtful and dishonest claims, and you reap perjury, corruption, and fraud. Men do not "gather grapes of thorns or figs of thistles" any more in international relations than in horticulture.

I beg your careful attention to these facts. There was a commission, constituted July 4, 1868, to settle the claims presented by the United States against Mexico and by Mexico against the United States. The record shows that the total amount of claims presented by the United States against Mexico was \$470,126,613.40, and the total amount allowed, \$4,125,622.20; the percentage of allowance therefore being 0.00877. The claims presented by Mexico against the United

States amounted to \$86,661,891.15 and the amount allowed was \$150,498.41, making the percentage of allowance 0.00162. In the commission constituted May 8, 1871, to settle the claims arising out of the civil war in the United States, the claims presented by Great Britain against the United States amounted to \$96,000,000, and the amount allowed was \$1,929,819, making the percentage of allowance 0.0201. The claims presented by the United States against Great Britain amounted to \$1,000,000, of which nothing whatever was allowed. In the commission constituted February 12, 1871, to settle the claims presented by Spain against the United States, the total amount of the claims presented by Spain was \$30,313,581.32, and the amount allowed was \$1,293,450.55, making the percentage of allowance 0.0426. In the commission constituted January 15, 1880, to settle the claims presented by France against the United States and by the United States against France, the total amount of the claims presented by France was \$17,368,151.27, and the total amount allowed \$625,566.35, making the percentage of allowance 0.003601. The claims presented by the United States against France amounted to \$2,427,544.99, while the allowance was \$13,659.14, making the percentage of allowance 0.00056. In the commission constituted August 7, 1892, to settle the claims of the United States against Chile, and of Chile against the United States, the total amount of the claims presented by the United States was \$26,042,976.96, and the amount allowed was \$240,564.35, making the percentage of allowances 0.00923. This commission expired by limitation, leaving undisposed-of claims against the United States for \$232,240, and against Chile of \$9,130.620. These undisposed-of claims were submitted to a new commission constituted May 24, 1897, and the claims presented to it by the United States against Chile amounted to \$9,130,620, while the allowance was \$28,062.29, making the percentage of allowance 0.00307; while the claims presented by Chile against the United States amounted to \$232,240, and the allowance was \$3,000, making the percentage of allowance 0.0129. Now, these commissions represented claims presented by the United States, by Mexico, by Great Britain, by Spain, by France, and by Chile, so that the character of the nations presenting the claims may be said to be fairly representative of all the civilized nations; and it will be observed, it is believed, with equal surprise and pain by this tribunal, that the total amount of claims presented by these six representative nations aggregated over 719 millions of dollars while the total allowances by the arbitral commissions appointed to investigate and settle them amounted to less than 8½ millions of dollars.

Notwithstanding these very suggestive experiences of the character of uninvestigated claims when these great allied powers came to pre-

sent their uninvestigated claims to Venezuela, they accompanied them with their ultimatums, and on refusal of their ultimatums they began the war. Of course, one ought never to be betrayed in the heat of argument into speaking disrespectfully of such great and powerful nations, nations to which the world is so much indebted in so many directions and which have made the life of the human spirit so much more enjoyable, as Great Britain, Germany, and Italy have done. Least of all should I do so, for each of them has a very warm place in my heart, and each of them has added greatly to my enjoyment of life.

But, after all, \$719,000,000 of claims were presented by six representative nations, and only \$8,000,000 of claims were allowed, and yet, at the cannon's mouth, Great Britain demanded from Venezuela \$27,500 for alleged claims which she refused to have examined; and Italy said, apparently, as Great Britain is asking for \$27,500, we will demand a like amount, although we do not know why she demanded that particular amount. Germany, it was supposed, was willing to take the same amount, but she raised it to \$325,000. So that this distracted and impoverished South American Republic has been compelled to pay to these three great nations \$380,000 while in the throes of insurrection and while the basis of these claims has never been impartially examined. It would be unjust to draw from these facts the conclusion that these claims were wholly unfounded; but it was unjust to have insisted upon payment, although no inquiry by impartial persons had been made as to their justice. Even if the claims were just, even if Venezuela owed the money, still they should have been presented before some impartial tribunal, especially when the history of such claims shows that of \$719,000,000 of them only \$8,000,000 were found to be honest when they were impartially examined.

I propose now to call your honors' attention in some detail to the different cases of alleged outrage, as illustrating just what course was pursued and what course ought to have been pursued, and I rely entirely on the British Blue Book for the facts.

The first claim made by Great Britain relates to the landing of 20 Venezuelan soldiers, January 22, 1901, on the island of Patos, between Trinidad and Venezuela, the title to which, as I have already stated, was in dispute between Great Britain and Venezuela. These soldiers are alleged to have seized four small boats belonging to peaceful traders (the crews of which had taken refuge from rough weather on the island), confiscated the cargoes and valuables found on the boats, and carried away some 10 or 11 persons, leaving on the island, without food or water or means of escape, the others "who had escaped into the scrub." Only three days thereafter, however, that is, on Janu-



ary 25, 1901, the Venezuelan consul, accompanied by the chief of the Venezuelan navy, reported to the British authorities that the facts relating to the matter were as follows:

Several boats were coming from Venezuela having on board many revolutionists leaving Venezuela. They were chased by the Venezuelan gunboat *Augusto*. The revolutionists forced the boats to put into Patos Island, where they were landed. \* \* \* The consul reports this because the people are still on Patos. He also asks if the police can not prevent Patos being made the point of departure of the revolutionists.

In this statement of the Venezuelan consul it is alleged in the British Blue Book that he admitted that Patos was British territory; but this is not very probable, because in the statement of the same consul, made February 27, 1901, he declared that the nationality of Patos was a disputed point.

Of these four boats only one was alleged to have been the property of a British subject, one Edward Brown, resident in Trinidad; but it is alleged that other British subjects were carried away by the Venezuelan gunboat which had landed the soldiers on the island of Patos, and among others the following names are given as those of such subjects: "Mrs. Jones, Dolphus, Domingue, Montout. Maxwell, Manto, (?) and George." Of these, Mrs. Jones, the only British name on the list, was landed at Yaqua and returned unharmed to Trinidad. George was landed at Mapire, "and John Manto (? or Graham) at Guyria." The most of these names are certainly not suggestive of British origin, and the uncertainty relating to them is well expressed by the interrogation marks and the doubts in the statement which is copied textually from the report of Governor Moloney to Mr. Chamberlain, the British secretary for the colonies, as printed in the British Blue Book. The governor reports that he took advantage of the presence at Trinidad of "the commander in chief of the North American and West Indian Squadron," and accompanied by the colonial secretary and the deputy inspector-general of police, in His Majesty's ship *Quail*, he visited the island of Patos, when he found it uninhabited and with no house; and he then adds:

Very serious notice should be taken of this incident, as otherwise neither life nor property will be safe on these parts of Trinidad which are close to Venezuela.

Now, would it not strike any reasonable mind that this was a very trifling occurrence indeed, and probably involving three disputed questions: First, as to the ownership of the island of Patos; second, as to whether the British subject named Edward Brown, residing in Trinidad, was or was not engaged in transporting revolutionists, as that is the statement promptly made by the Venezuelan consul and the chief of the Venezuelan navy; third, whether the alleged British subjects on board the three Venezuelan boats were not en-



gaged in the same or some other illicit traffic? At most this was a trifling and disputed occurrence in which the blame may be on one side or the other, or may be equally distributed; but, however that may be, no great harm was done to anybody. The Venezuelan gunboats chased these boats until they landed at Patos; the boats were not harmed; the people were not harmed; and a dispute exists as to whether the governor of Trinidad was right or Venezuela was right. But nobody was harmed. In the intercourse of nations of equal strength what would happen in a matter of this kind under the circumstances as represented in the British Blue Book? The authorities at Trinidad seemed to be determined to find a basis of complaint in this occurrence against Venezuela. There was no effort to examine into the allegations made by the consul of Venezuela; there was no damage suffered, and if the Venezuelan statement was true there was no shadow of claim for any reclamation. And yet it has been dignified by being made the subject of 29 separate communications and statements. Now, surely this is not a case calling for war by a power fresh from signing The Hague Convention for mediation and arbitration! It would not be possible to make many such claims justify a declaration of war.

Take the next complaint, following the order of the British Blue Book, made March 22, 1901. It concerns an alleged outrage on a British subject named James Nathan Kelly, born in Trinidad, aged 40, but who has been living in Venezuela for the last fifteen years—that is, ever since he was 25 years old—where he had purchased an estate and was cultivating coffee and cocoa to a considerable extent in Rio Grande.

That statement presents another question of great interest to these South American countries; and it is also of great interest to some European countries; that is, whether a person who deliberately changes his domicile, who abandons the country of his birth, and by every sign of value indicates his intention to remain the rest of his life in another country is still to be accorded exceptional treatment by the country with whose lot he has cast in his own. I beg you to consider if a British subject had taken up his home, when 25 years of age, in the United States, had lived there for fifteen years, had invested his means there, and had given no sign of intention to return to his own country, whether Great Britain would demand for him better treatment than is accorded the citizens of the country where he has made his home; for in considering this question of reclamation by one country on behalf of persons born in it against another country in which they reside, there certainly ought to be some forbearance when the persons on whose behalf the reclamation was made have abandoned the country of their birth, chosen a home in another country, invested their means there, and are living there without the slightest apparent intention of returning to the country of their birth.

Another fact of importance in Kelly's case was that at this time the province of Rio Grande was occupied by troops of the Venezuelan Government in pursuit of the insurrectionists' forces, and it is alleged an officer arrested Kelly, who was sitting at his own door, and dragged him before a court-martial. In the meantime, it was also alleged that his house was broken open and pillaged. "Goods to the value of \$300, furniture worth \$300, cocoa to the value of \$1,040, \$1,500 in cash, and a cutter valued at \$500" were taken away by the soldiers. These values in round numbers so closely resemble the exaggerated claims usually made in such cases as to have called for very careful investigation. Kelly's wife took refuge, it is said, in the woods near Rio Grande, and, making her way to La Guaira, eventually reached Trinidad in great distress. Since the first pillage above recounted, Kelly's estate had been subjected, it is alleged, to further depredations; but surely it is needless to say that occurrences of this character are almost certain to occur during the existence of civil war in almost every country, and of course they are far more likely to occur in a country like Venezuela than in more settled communities. But they occurred frequently in the United States during our civil war. They are never to be excused, but they are always to be expected, and when they happen they should be very carefully examined. In other words, a British subject who has been living there for fifteen years was arrested by the soldiers, his property taken, and himself taken before a court-martial. Venezuela replied that Kelly was engaged in aiding the insurrectionists in Rio Grande, and that his losses were grossly exaggerated. Here were three serious questions demanding an impartial investigation: First, was Kelly assisting the insurrectionists? Second, had he virtually abandoned Trinidad and become a Venezuelan? Third, what amount of loss had he really sustained? Instead of examining any of these matters, the British minister at Caracas remains quiet under this alleged outrage upon a British subject from June 19, 1901, to November 20, 1902, just five months after Great Britain and Germany had agreed upon joint action against Venezuela, and eighteen months after Venezuela had made her answer to the complaint; and this is not an unfair sample and type of the cases which now are offered to you as a justification for making war upon Venezuela; and the British authorities then introduced evidence such as one would expect to find in operatic comedy, for they offer to you as proof of the loyalty of Kelly the affidavits of the chief of the insurrection and of two of his officers who were then living in Trinidad under the protection of the British Government! While it is frankly admitted that "it is impossible for any one to give an opinion as to the value of the amount of the loss," which, "according to Kelly's estimate, amounts to \$3,640," an amount which is stoutly denied by the Venezuelan inspectors, it is neverthe-

less demanded that Venezuela shall pay to Kelly all he claims, on the extraordinary ground that the Venezuelan Government "has not disproved Kelly's claim."

Justice to the British foreign office requires it to be said, however, that Lord Lansdowne did not allow this case of Kelly to appear in his list of alleged wrongs by Venezuela, dated at the foreign office July 20, 1902, nor in the list of July 29, 1902, nor in the memorandum furnished the admiralty August 8, 1902, nor in the memorandum of such alleged wrongs communicated to the German ambassador October 22, 1902. It may therefore be safely asserted that, even in the opinion of Great Britain, this case did not call for war by a power fresh from signing The Hague Conventions for mediation and arbitration.

There is no doubt whatever that if England, Germany, and Italy can satisfy this tribunal that they had adequate cause for declaring war, causes which were of such a character as to merit your approval, then they are entitled to preferential treatment. But if they had no such causes as in your judgment justified the delivery of the ultimatums they delivered, and recourse to the force which they employed, then it is impossible to award them preferential treatment. We desire, therefore, that the true character of these alleged outrages shall be apparent to you, and that each of them shall be carefully examined by you; and they are summarized in a note of the British Government demanding immediate reparation for these alleged wrongs, and upon failure to grant it the declaration of war followed. Unnecessary war, of course, ought not to come here for an award of merit. This is the tribunal of the peace conference, and therefore not a tribunal which can possibly award merit for making war unless the war was fully justified. If the causes alleged for the war are utterly insufficient, then the war is not justified; so that not only in this case but in all similar cases the nations of the world will know what is expected of them. They must not attempt to collect frivolous, unimportant, or unverified claims by a resort to force.

Let us take the next complaint. It relates to the burning of a small vessel, a sloop called the *María Teresa*, the property of an alleged British subject, by a Venezuelan gunboat off Guiria; but the *María Teresa*, it appears, was sailing under the Venezuelan flag, although alleged to be owned by D. Wilson, a native of Grenada, and therefore by birth a British subject. It further appears that during a then recent disturbance in the Gulf of Paria this vessel fell into the hands of disaffected persons at Yrapa, and that the owner obeyed their orders and took an officer of the insurrectionary forces on board. In this situation the *Miranda*, a Venezuelan gunboat, entered that port and fired two shots at the *María Teresa*, and she was afterwards

captured and set on fire. During the burning of the ship, Wilson, the owner, appears to have been on shore at Guiria as an alleged prisoner of the insurrectionary authorities. These facts show that this boat was sailing under the Venezuelan flag, but in the custody of the insurrectionists, and it would seem to be eminently proper that the Venezuelan gunboat should capture and burn her. Venezuela was engaged in suppressing a formidable insurrection, and here was a vessel sailing under her own flag and serving the insurrectionists, and she captured and burned her. Why should not she do so? And yet the British Blue Book discloses that this pretended outrage was reported in great detail and commented upon in no less than 26 communications and statements.

The Venezuelan Government gave a prompt and full statement of the circumstances the moment they were questioned about it. The commander of the gunboat said that they were crossing opposite the harbor of Guiria, then in control of the rebel forces:

Having drawn near to the shore, we noticed a sloop putting out to sea with great haste. By General Rosales's orders we started in pursuit of her, but the sloop not obeying the signal to stop, it was necessary to fire one or two blank shots to make her lie to, as she afterwards did. She turned out to be the *María Teresa*. The only two men on board of her informed us they put into Guiria by order of the rebel chief; that he was then at Yrapa, and that they had, seeing the steamer, endeavored to flee. General Rosales then ordered them to sail to Trinidad, setting them at liberty. We were already leaving the spot when we saw that the *María Teresa*, instead of sailing for Trinidad, was making for the land as fast as she could, with her bow pointed to Yrapa. This being exactly opposite to the orders she had received, and exceedingly suspicious at such a time, we therefore again gave her chase and captured her. Not being able to tow her into any port, because by so doing we should abandon the cruise, General Rosales resolved to destroy the sloop as being one of the vessels used by the revolutionists. The boat was in ballast, and nothing whatever of her contents was touched. The two men who comprised her crew were transferred to the *Miranda* without ill-treatment of any kind whatever. No documents were found on board the *María Teresa* which might prove the ownership of the vessel. The statements of the men and their doubly attempted flight proved their complicity with the rebellion.

It does seem incredible that a Government like Great Britain, even if these facts were inaccurate, would make the destruction of a vessel sailing under the Venezuelan flag, with two men on board alleged to be in the service of the revolutionists, a basis for war.

Look at the next alleged outrage, April 9, 1901. That outrage was alleged to have been committed upon John Craig, a fisherman of Trinidad, and his fishing boat, the *Sea Horse*. He is said to have proceeded to the suspected island of Patos and there to have met another boat, "the *Buena Fe*, belonging to Simon Revera, a Venezuelan citizen." This meeting place of these two boats, it will be observed, was the island of Patos, of disputed sovereignty and of

very suspicious reputation; and to this island came three men from a small Venezuelan guarda costa, who are alleged to have assaulted Simon Revera, a Venezuelan citizen, but are stated not to have touched John Craig, a British citizen. As in the former case, there was a suspicious running away by at least one of the men who had landed upon this suspicious island, and the Venezuelan sailors are then alleged to have seized, not only the *Buena Fe*, which belonged to Simon Revera, a citizen of Venezuela, but also the fishing boat *Sea Horse*, belonging to John Craig. In this case it would certainly be natural that as John Craig took his fishing boat, the *Sea Horse*, to the suspicious island of Patos, to meet there another boat, owned by a Venezuelan, a suspicion should arise that they were engaged in some illegal or contraband transaction. This alleged outrage is treated in 16 communications and statements. In this case not only was the British claim to exclusive sovereignty over the island of Patos flatly contradicted on behalf of Venezuela, which itself laid claim to such sovereignty, but the citizenship of John Craig was also a matter of dispute, the Venezuelan authorities claiming that he was a native of Marguerita, and therefore a citizen of Venezuela; and the British minister at Caracas thought it a sufficient answer to this allegation to say that John Craig was a British name, though in the first outrage the list of names suggested anything but British origin. The Venezuelan authorities also offered evidence to show that they were justified in believing that John Craig was engaged in smuggling, and, indeed, his own failure to give any reason for meeting the Venezuelan boat at the island of Patos would seem strongly to support that suspicion. Now, certainly there are here presented three most serious questions, affirmed on the one side and denied on the other: (a) As to the ownership of the island of Patos; (b) as to the citizenship of John Craig; (c) as to the suspicions attaching to the boat at the time of its seizure; all of which questions could only properly be resolved by a reference of them to an impartial examination and decision.

The alleged outrage itself was very trifling. No damage was done to John Craig, no injury was suffered by him, and yet not only did the British Government make the occurrence the subject of complaint and allege it as a cause for war, but they actually took up the case of the Venezuelan vessel, the *Buena Fe*. The harbor master at Trinidad felt the embarrassment of the situation, as is shown by his statement: "He informs me that he has resided in Trinidad for about three years, and his vessel being under the Venezuelan flag, I have advised him to make his complaint to the Venezuelan consul." He admits that the vessel was under the Venezuelan flag. It is not that this claim is for damages, as if John Craig was before a commission and endeavoring to satisfy an impartial tribunal that he had



been unjustly treated and entitled to damages, but it is made a cause for war without examination into the facts and without any impartial investigation whatever.

If possible, the next case is even more remarkable. It relates to the seizure of the sloop *Pastor*, August 31, 1901, by the Venezuelan gunboat *Totuma*, and again the locality of the seizure is off the suspected island of Patos. The person who, in this case, invokes the protection of the British Government is called Numa Audry. He says he is a native of the island of Trinidad, and that while off Patos in his sloop the captain of the Venezuelan gunboat *Totuma* commanded the boat to stop, the captain was taken prisoner, and the next morning the sloop was towed to Guiria by the *Totuma*, and that he himself "was detained for two hours at the custom-house." In the second statement, however, he admits that he had a passport dated August 19, 1901, just twelve days before the alleged outrage, issued to him by the Venezuelan consul at Port of Spain, so that evidently he was then a citizen of Venezuela. He says that his "box was rummaged and his razors were stolen." The captain was a Venezuelan. He says: "Everybody on the sloop was ultimately released, and I returned to the sloop." Really an occurrence of that character would hardly seem to justify the seizing and sinking of the ships, the bombarding of the forts, and the blockading of the ports of Venezuela by a power fresh from signing The Hague convention for mediation and arbitration. If so trifling a matter was to be made the subject of serious complaint, certainly some method should have been suggested by the British Government for an impartial investigation of the facts concerning it; and in all these alleged outrages it must never be forgotten that the Government of Venezuela believed that upon the island of Trinidad the enemies of the existing administration of Venezuela were allowed to carry on their plans with absolute liberty. The Venezuelan Government asserted that "a proof of the hostile deeds which there are done without hindrance lies in the fact that only a short time ago two bodies of invaders issued from that colony. The first, which was completely defeated, returned to the island; and of the second, various prisoners, forming a living testimony of the invasion, fell into the power of the Venezuelan military authorities as the result of defeat."

It thus became largely a question of attitude. If there had been shown in these transactions the slightest desire for a friendly and amicable arrangement, some evidence would have appeared of it. On the contrary, the British minister at Caracas sent a dispatch to the governor of Trinidad, saying that the Venezuelan Government "has just informed me that a few days ago a great quantity of rifles and cartridges were disembarked in the island of Tobago, an island near the island of Patos, in a suspicious manner, suggesting that an attempt may be made to produce a disturbance with them in Ven-



ezuela. The minister for foreign affairs has begged my mediation with your excellency in the matter. To this I am replying that it is one entirely for the internal administration of the colony of Trinidad. He also begged me to communicate with your excellency immediately." And on December 2, 1901, the minister wrote to the Venezuelan minister for foreign affairs as follows:

In my note to your excellency of the 22d ultimo I informed you that I had lost no time in forwarding to the governor at Trinidad the request of the Venezuelan Government, that measures should be taken as soon as possible to prevent the export of certain arms from the island of Tobago, which, as your excellency surmised, were possibly to be used in an attempt to produce a disturbance among the Venezuelan people. I have now received his excellency's reply, in which he states that this matter has been under his consideration, and that he has no knowledge or control over the purposes and direction of these arms, and that he has no information to lead him to suppose they are going to be used as is alleged. Neither can his excellency find any precedent whatever in favor of interference, nor is he prepared, in view of the condition of things prevailing in the Spanish main, to accept the grave consequences of any such action against what he is given to understand is legitimate business.

That is, this struggling and defenseless country, seeking to suppress an insurrection, through its minister for foreign affairs addresses a respectful communication to the governor of Trinidad, saying that arms and munitions of war are being landed in British territory and are about to be transferred to Venezuela for use by the insurgents, and requests him to give assistance to prevent their application to such purposes. The governor of Trinidad replies that, in view of "the conditions existing on the Spanish main," it is quite impossible for him to do so, and that he sees no reason for interfering with what he calls "legitimate business." Everything I am presenting to you I have gathered from the British Blue Book, of which we have presented you copies, and you have an illustration in this correspondence of the temper of the British authorities at Trinidad toward the Venezuelan Government.

You have five complaints by the British Government up to this time, and their character I have fully disclosed to you; so that you see on one side prompt answers by Venezuela in every case of alleged outrage, and on the other hand a refusal by the British authorities of Trinidad to help to prevent assistance being given to the insurrection from that island.

It is this attitude which led to the blockade; these are the matters and the only ones which led up to the declaration of war, and it is only when your honors understand them, when you weigh their import, their gravity, and the propriety of making them causes for war, that you can wisely know and properly decide whether the war was justified or not. If the war was justified, then beyond any question the allies are entitled to your approval. If the war was not

justified, then as certainly they are not entitled to your approval; so that the marrow of the whole matter lies in the true character of the alleged occurrences which are claimed to have justified the declaration of war; and, as I said in the beginning, as the allies made common cause the acts of one are binding upon them all, and if we succeed in showing that Great Britain had no justification for making war upon Venezuela, then we have succeeded in demonstrating beyond any possible question that she and her allies are not entitled to preferential treatment over the nations which did not make war. It is therefore the very essence of our controversy that you should know thoroughly each step taken toward the declaration of war from the beginning of the alleged outrages which were said to have justified it up to the moment when Lord Lansdowne instructed the British minister to present his ultimatum and allow Venezuela a very brief time indeed in which to accept it; and, in default of acceptance, to have her ports blockaded by the hostile navies of Great Britain, Germany, and Italy.

That is the meaning of the ethical question which we say is presented here; that is the reason why we have never thought it required any detailed examination of any facts other than the facts alleged by the allies themselves as completely justifying their action in declaring war. If they can satisfy you that they were completely justified, then they merit your affirmative approval, and you must award them the preferential treatment they ask. If we can satisfy you that they were not justified in making war upon Venezuela, then you can not award them preferential treatment over the governments which desisted from making war. So that, I repeat, the whole marrow of the question, as we understand it, is there. That question is involved in detail. It is irksome to me to present it to you, as it is irksome to you to hear it, but it is indispensable, and therefore it is my duty to present it in detail, and it is your duty to listen to it, as you have done with the most exemplary patience.

After all, then, it is an ethical question which is presented in this controversy and only an ethical question because it involves the construction of the duties of these blockading powers after the signing of the conventions of The Hague Conference. It involves the question of the duties of the allied powers and whether they discharge them as required by those conventions. In other words, was the war they waged upon Venezuela a just and necessary war or not? We know very well that The Hague Conference and this tribunal combined can not abolish war. Cases have occurred in the past and will occur again in which it will be absolutely impossible for the matters in dispute to be brought here. Take the case of our own civil war. Assuming that this tribunal had then been in existence, there were many millions of American citizens living south of a certain desig-

nated line who honestly believed that they were entitled to have their one country separated by that line into two countries. North of that line there were equally honest citizens who believed it was their duty to spend the last drop of their blood and the last dollar of their treasure to prevent such separation. That is a controversy that it would be impossible to submit to arbitration, and there are innumerable instances of the same kind; but throughout all American history there has been shown an ardent desire to settle all questions by arbitration which can be so settled.

When the public mind of a great people becomes inflamed with martial ardor the government will often be obliged to accede to the demands of the people; so that there will be wars, perhaps neither just nor necessary, the causes of which can not be brought here, and there will be just and necessary wars in the future as in the past, upon which this tribunal ought to put no mark of disapproval. It is a peace tribunal, and was instituted in the interests of peace, but a just and necessary war offers no occasion to this tribunal to condemn it. The question will recur, when you read the British Blue Book with the care it deserves, was the war waged by these three great powers against Venezuela, was the sinking of her defenseless little ships, the bombarding of her defenseless forts, the closing of her ports to the commerce of the world, which Lord Lansdowne declared were, of course, acts of war, which the prime minister declared were acts of war; were these acts of war just and necessary? If they were, and as these acts produced the fund you are about to distribute, then it will be necessary for you to decide whether the principle of equality of States as recognized in the distribution of the fund extorted from China should be followed or whether the parties who made war upon Venezuela are justly entitled to preference of treatment. But before you can reach that question you will have to decide that it was a just and necessary war. It is for these reasons that we have called to your attention the character of the incidents alleged by Great Britain as a basis for making war upon Venezuela. I have shown you five such trifling, unimportant incidents as I submit nobody can really argue furnished just cause for war at any period of history. When, on the other hand, Venezuela asked the British authorities in Trinidad to prevent the sale of arms to insurgents who were engaged in carrying on an insurrection against a government with which Great Britain was at peace, she received this reply:

His Majesty is not able to find any precedent whatever in favor of interference, nor is he prepared, in view of the condition of things prevailing in the Spanish main, to accept the grave consequences of any such action against what he is given to understand is legitimate business.

That is, an effort to overthrow the lawful government of Venezuela is legitimate business in the opinion of the governor of Trinidad,

and any person wishing to aid the insurrection by selling it arms and munitions of war is engaged in legitimate business.

I beg you will not misunderstand the views which prevail and find frequent expression in the contemporary literature of the day as to the necessity of some European or American country conquering Venezuela. It is not for a moment intended to assert that those statements are correct. It is only intended to point out that there is excuse for the existence of suspicion on the part of Venezuela, which suspicion must be taken into account by this tribunal when complaints are made against her of misconduct. It can not be expected that the same calm, wise, and conservative action will be taken by a country which is suspicious of attempts at conquest as by a nation like Russia or Great Britain or Austria, reposing in the confidence of its strength and fearing no assault upon its existence. Their public men are, of course, in a much calmer and wiser state of mind than the public men of a distracted country which believes itself to be confronted with a war of conquest. We therefore ask you to consider whether a great nation like Austria would seriously press upon a great nation like Russia any causes of complaint of the already described character or whether Russia would seriously urge them upon the attention of Austria; because, after all, noblesse oblige, and it is important to the peace of the world that great and powerful nations should treat the weak and defenseless nations with a respectful consideration and with a recognition of the fact that, after all, they are independent members of the family of nations. Suppose, for instance, Austria complains that she was endeavoring to suppress an insurrection, and that Russia was allowing munitions of war to be sent to the insurrectionists, does anyone suppose that Russia would send to Austria the same character of reply which the governor of Trinidad made to Venezuela?

We come now to the next alleged wrong. It is that a small colonial sloop, said to be British owned, while in the waters of Venezuela was seized and detained by the Venezuelan authorities. Now, again, the circumstances are detailed in the British Blue Book. The sloop had no papers, she was abandoned by her crew, and Venezuela alleged that she had been engaged in smuggling operations, and there the matter rests. There was never any investigation, there was never any inquiry to which Venezuela was a party. Great Britain accused Venezuela, and Venezuela replied by making allegations against the sloop and the people whom she was alleged to have offended. All the alleged injuries were of the smallest and most trifling character. No British subject was killed; no British subject was even seriously injured. Consider the contrast presented when the complaint is against one of the powerful nations.

One day the American people awakened to find that several sub-

of a wrong was made which was not promptly answered and the reasons given for the action taken, and yet this extraordinary telegram is sent by Lord Lansdowne to the British minister at Caracas:

The liberty and the property of British subjects have been in a succession of cases interfered with in a wholly unwarrantable manner by the Venezuelan Government. The following incidents have been the subject of serious consideration by His Majesty's Government: The action of the gunboat *Augusto* in seizing and deporting certain British subjects in January, 1901, the seizure of John Craig's boat and property on Patos in the February following, the similar efforts on the same occasion in the case of the *Buena Fe*, which was accompanied by a violation of treaty, and the cases of the vessels *Maria Teresa*, *Pastor*, *Indiana*, and *In Time*. No satisfactory explanations have been received from the Venezuelan Government in any of these cases.

I have told you what their excuses were; in every single instance they ought to have been satisfactory to any fair-minded person, to the extent, at least, of requiring very careful examination. Yet Lord Lansdowne continues:

His Majesty's Government can not tolerate a continuance of the conduct which culminated in the last-mentioned incident and you will address a formal protest respecting it to the Venezuelan Government. You will say to the President and the minister of foreign affairs in unmistakable terms that unless the Venezuelan Government promptly pays to the injured parties full compensation whenever satisfactory evidence has been furnished to His Majesty's Government that such is justly due, His Majesty's Government will take such steps as may be necessary to obtain the reparation which they are entitled to demand from the Venezuelan Government in these cases, as well as for any loss to British subjects caused by the unjustifiable conduct of the acting Venezuelan consul at Trinidad, and on account of the railway claims.

In thus suddenly but very suggestively introducing "the railway claims" and claims of a similar character, these allied governments would seem to run counter to the views of two very eminent statesmen. Lord Salisbury expressed himself with his usual directness as to the impropriety of making war to collect alleged debts of financial adventurers in foreign countries, and we find Prince Bismarck of opinion that it was "undesirable to inject the policy of Germany in anything that may smack of intervention in favor of speculators who undertake transactions in a foreign country with a full knowledge of doing so for their account and at their risk."

It now appears that war is to be declared not for a little fishing boat bought by a domestic servant for \$200 and owned by an American citizen, or for detaining suspected persons two hours in a custom-house, but on account of the railway claims. "First the missionary, then the financial adventurer, then the gunboat." In this case the missionary was dispensed with. Now, certainly this dispute is of an extraordinary character with Great Britain—with such powerful allies as Germany and Italy—on the one side and Venezuela, engaged in a life and death struggle to suppress an insurrection and continually hampered



by smuggling and insurrectionary expeditions, on the other side, and in view of the professions of the allies at The Hague conference, as well as in view of the provisions of the conventions to which they had been principal signatory powers, it was, we submit, incumbent upon them to urge her again and again to refer these unimportant matters to impartial arbitration for the ascertainment of the facts and the decision whether any, and, if any, what, damages ought to be paid by Venezuela to any of the alleged sufferers from these occurrences, as well as to refer to arbitration both the railway and similar claims. On the contrary, they not only peremptorily declared all the explanations offered by the Venezuelan Government unsatisfactory, but they directed their diplomatic representatives to inform the Venezuelan Government in unmistakable terms that, unless the demands thus peremptorily presented were at once granted, compliance with them would be enforced by war. The replies of the Venezuelan Government were as dignified, as conservative, and as deprecatory of the wrath of the allies as possibly could have been expected under the circumstances.

Meanwhile the Venezuelan Government, finding these small and trifling occurrences threateningly arrayed against her, had recalled attention to the fact that she had been persistently making a claim against the British Government of far greater importance and resting upon a far more substantial basis. You will find the story told in the British Blue Book and the Venezuelan Yellow Book in our Appendix, and it is briefly this:

While Venezuela was engaged in suppressing the insurrection headed by General Matos, who was living in Trinidad and conducting thence expeditions against Venezuela, he conceived the idea of securing a warship and having it assist his insurrection. He bought a ship lying in the port of London called the *Ban Righ*, and under the eyes of His Majesty's officials he transformed that ship in the port of London into a man-of-war. Notwithstanding the earnest protestations of the Venezuelan Government, that vessel thus transferred into a man-of-war was allowed to sail from the port of London to Antwerp. There she received her guns and ammunition and then she started on her unlawful career. Venezuela from time to time implored the British Government to refuse to countenance the buying and fitting out of this ship by General Matos, as her character was perfectly well known to the Venezuelan Government and had been communicated to the officers of the port of London. And yet, under the pretense that she was for the Colombian Government, she was allowed to enlist a crew of English sailors in the port of London and to sail away to Antwerp and there receive munitions of war and armament, and then sail to the Caribbean Sea, and while at sea she was transferred to General Matos, who took



command of her, the leader of the insurrection against Venezuela. She was then allowed to pursue her course of depredation by the British Government, was given a welcome in British ports, allowed in such ports to refit and recoal against the protest of Venezuela, and to change her name and flag three or four times—running up a British flag or a Colombian flag or a Venezuelan flag, as it suited the purpose of General Matos, to whom she had been transferred, and changing her name as freely as she changed her flag; and to all the protests of Venezuela the British Government replied: She is said to be a Colombian vessel, and we can not stop her. They knew that she belonged to General Matos, but they would not take any steps against her, and they actually threatened Venezuela that if she injured a single British sailor on this ship, which was making open war upon her, they would hold Venezuela responsible to the last extremity.

When Venezuela received this last dispatch she replied that she could not consider the trifling and unimportant claims made against her as long as Great Britain refused even to consider Venezuela's reclamations on account of the *Ban Righ*. Over and over again, in dispatches which would not reflect discredit on any Government, Venezuela points out what she is suffering from the depredations of this unlawful ship, and she received only curt replies, refusing even to discuss the matter.

It is very curious, but it is none the less true, that something very similar happened once before, and on that occasion also it was the British Government which did almost exactly the same thing, under almost exactly the same circumstances. We were engaged in suppressing what we called a rebellion, although the Confederate States were a belligerent power, and therefore at perfect liberty, as General Matos was not, to employ a recognized flag, and thereby make their vessels legitimate vessels of war, instead of being without any recognized flag, as the *Ban Righ* was, and therefore without any lawful status, even on the high seas, and much less in the ports of a nation at peace with Venezuela; and one of the most interesting controversies in diplomatic history is that which details the efforts of our very able and distinguished minister at London, Mr. Charles Francis Adams, to prevent the sailing of the Confederate cruiser. His grandfather had been President of the United States, succeeding General Washington; and his father had also been President of the United States, and he was himself one of our most distinguished and honored citizens. When he discovered that in the ports of Great Britain vessels were being fitted out to destroy American commerce and to break the blockade of the Confederate ports, he very energetically protested and insisted that it would be a flagrant violation of international law if Great Britain allowed such ships to be built in

and escape from her ports. A long correspondence ensued regarding the fitting out of the *Shenandoah*, the *Alabama*, and the other vessels intended for the service of the rebellion; but all protests were unheeded. At last Mr. Adams sent a brief, pregnant, and decisive dispatch to Lord Russell, saying in substance: I have done what I could to induce the British Government to respect its obligations to my Government, and now, I understand, in addition to the *Shenandoah* and the *Alabama*, you are in danger of allowing to escape two additional armed ships from your ports to make war upon my country. We are in great extremity; we are struggling to suppress the greatest civil insurrection in history, but it would be superfluous to notify your lordship that the escape of these additional vessels means war. At the last moment the conservative good sense of Great Britain, which has so often marked her career, came to her guidance and she stopped these two vessels, which had not yet put to sea. It was not the threat of war which caused her to act thus. She knew we were in a comparatively helpless condition. It was her sense of justice which prevented these additional vessels from being used against us, and it was a striking coincidence that before leaving his post as minister Mr. Adams witnessed an assembling of the British fleet, and he saw in the fleet, under the British flag, the two identical vessels whose sailing he had prevented and thereby possibly prevented the disruption of his country.

Mr. Adams's opinions of the conduct of Great Britain with reference to these vessels are singularly applicable to the duty of the British Government in the case of this vessel, called at first *Ban Righ*, and allowed to prey upon a friendly government. The language he uses in some respects could have been used by the Venezuelan Government in their earnest entreaties to Great Britain to regard their protests against allowing this hostile vessel to continue its unlawful career. In the case of the United States the sense of injustice remained for many years a serious and ever-growing source of danger to the peace of the two kindred countries, until at last by the wisdom of conservative statesmen on both sides of the ocean it was agreed to submit the question of liability for the depredations of those Confederate cruisers to the Geneva arbitration, which awarded the United States 15 millions of dollars because Great Britain had done in those cases what appears to bear a striking similarity to what she has done respecting the *Ban Righ*. At least here was a question deserving a reply, a question deserving to be treated in a tone respectful to Venezuela. It was, it seems to us, a question worthy of the consideration and the decision of this tribunal: What are the obligations of a friendly power toward ships being fitted out in her ports intended to be used in support of a rebellion against a power with which she is at peace—such rebellion not having been recognized as

a belligerent power? I do not say how that question should be decided, but I do insist that it is a proper question for impartial decision, and that no nation, however powerful, in dealing with a nation however weak, has any moral right whatever to refuse to have it discussed and decided by an impartial tribunal. I do insist that there are substantial merits in such a controversy worthy of the cognizance of this great court, a controversy concerning the depredations of the *Ban Righ* after she was transformed into a vessel of war in the port of London, manned by a British crew, and turned over to General Matos on the high seas, as the leader of an insurrection which had not been recognized as a belligerent power, and therefore without his having any flag he was authorized to put at the masthead of his vessel. Such a controversy is far more serious in its consequences and in its character than all of the small and unimportant occurrences alleged against Venezuela. And yet Great Britain declined absolutely to consider the matter of the *Ban Righ*; and Venezuela, in her weakness, but relying on her self-respect as an independent nation, declared that unless you will consider the case of the *Ban Righ* we will not consider the matters of which you have complained, and which we have already explained to you, and about which we have made sufficient answers. Great Britain curtly replied that she would not even consider the reclamations of Venezuela on the subject of the *Ban Righ*.

I repeat, I do not venture to predict how such a question should be decided; but I also repeat that it is a question proper for decision by some impartial tribunal, and that Great Britain had no moral right to refuse to consider it. It is a long story, and the Venezuelan Government finally declares: "His Excellency, the President, does not, therefore, think that such a situation can exist, and much less can he admit your excellency's opinion that the thing is chose jugée. With regard to this he is giving me orders to express very respectfully to your excellency that he awaits the result of the questions relative to the *Ban Righ* in order to be able, free from any unfortunate interruptions, to continue considering with your excellency, on bases of mutual cordiality, the other matters which reciprocally concern the Venezuelan Government and the legation of Great Britain." It is submitted with great confidence that this communication is eminently creditable to the Government of Venezuela in the situation in which it then found itself placed, and it is of the greatest importance to pass judgment upon this communication, because, resting upon it, the Venezuelan Government declined to engage in further discussion of the slight and trivial causes of complaint alleged against it by the British Government, unless the British Government was also willing to make its responsibility for the depredations of this unlawful vessel the subject of diplomatic

negotiations. Consideration of the matter was all Venezuela asked, and unless Great Britain was willing to agree that the depredations of this vessel, made a man-of-war in her port, manned by her subjects, and welcomed in other of her ports after she was transferred to General Matos, should become the subject of diplomatic negotiations, Venezuela was unwilling to make the claims alleged against her the subject of further discussion. That is the position of Venezuela. What was the reply made to it? Under date of March 27, 1902, the British minister replies, notwithstanding the notorious character of the ship in question: "I am instructed by His Majesty's Government to inform Venezuela that as it would seem that that ship is now ostensibly, at least, a Colombian man-of-war, and is flying the Colombian national flag, they can not properly direct any action against her;" and on May 16, 1902, the British minister at Caracas reports to Lord Lansdowne that—

the Government of Venezuela had made complaint that General Matos, the notorious insurrectionist, was making Trinidad the base of his attacks on Venezuela, directing, indeed, the revolution from there. I then wrote him not to put forward any request which it would be impossible to grant, such as that of the expulsion of General Matos. \* \* \* I pointed out that for more than half a century Trinidad had been a refuge of Venezuelans of all parties, one after another. Had he ever heard of any being expelled? To-day it was General Matos, to-morrow it might be some of the other party.

There is another similarity in reference to the two vessels already mentioned which the British Government proposed to let loose against the United States, but did not let loose, and the case of the *Ban Righ*, for there also a foreign government—that of China—was put forward as the ostensible owner, the agents of the Confederacy having succeeded in making a loan upon the pledge of Confederate cotton in Paris with a well-known banking house there, and the banking house having pretended that they were buying the two ironclads in question for the Chinese Government. The same thing happened in the case I am discussing. The pretense of foreign ownership was fully exposed by the Venezuelan Government before the vessel sailed, and soon afterwards the British Government was formally notified that she had been actually turned over to General Matos, so that it was not becoming in Great Britain to insist that she would not even reply to the Government of Venezuela on the subject, but that she would regard it as chose jugée, to which, as I have already said, Venezuela replied that it was not chose jugée and could not be admitted to be such, and that, on the contrary, Great Britain was obliged to enter into diplomatic negotiations on that subject as well as respecting the complaints she made against Venezuela.

There is a striking precedent applicable in this matter. The British Government, many years ago, finding an American sloop named *The*

*Caroline* in the waters of the Niagara River, which it was alleged had been engaged in carrying arms and munitions of war to the Canadian insurgents, seized her and set her on fire and sent her burning over Niagara Falls. The British Government always refused to admit the slightest responsibility for doing so, saying that the vessel had been engaged in helping the insurgents in Canada. Though she was flying an American flag and was an American boat, they seized and destroyed her.

It seems to us, therefore, that in considering the question now before you, you will find that when the issue was distinctly made before the war was declared, it presented this extraordinary situation: Six trifling, unimportant offenses are alleged to have been committed by Venezuela during a civil war, against persons alleged to be entitled to the protection of Great Britain. No life was lost, no serious injury was inflicted, no serious damage had been suffered. On the other hand, Great Britain had allowed a ship to be transformed into a man-of-war, to assist an insurrection then raging in Venezuela, in the port of London, to sail thence and to be welcomed in her ports, and had refused to lay her hands upon her, thereby encouraging her to continue her unlawful depredations against Venezuela, and the alleged wrongdoer, Great Britain, assumes the attitude of the injured party and makes an alliance with Germany to force Venezuela by their combined fleets into compliance with an ultimatum which refuses discussion even of the question of the grave depredations of the *Ban Righ*, which refuses to allow to be investigated the claims put forward, and demands peremptorily of Venezuela that she shall agree at once to accept in principle all the demands of the allies, and that Venezuela shall have no hearing of her complaints as to the *Ban Righ*. On the date of August 8, 1902, in view of this situation, the British Foreign Office asks the British Admiralty for their views "as to the most effectual and convenient manner of putting pressure on the Venezuelan Government," and it is added, "Count Metternich, the German ambassador, has suggested that the powers concerned should take part in a joint naval demonstration." In reply to this inquiry the Admiralty incloses to the Foreign Office a letter from Vice-Admiral Douglas, naming the powerful ships under his command, and with which he could carry out a naval demonstration against Venezuela. On October 22, 1902, the British Government communicated to the German Government the hope that the latter would unite with His Majesty's Government in putting pressure upon Venezuela, and associating themselves with His Majesty's Government in this preliminary step, and in such case they may be disposed to instruct their representative at Caracas to inform the Venezuelan Government that the Imperial Government is aware of the communications which have passed between this country and Venezuela,



and "that the British and German Governments have determined to act together in pressing the claims of their subjects upon the attention of Venezuela." In this communication the British Government for the first time, as appears by the Blue Book, to which reference has been made, declared that it would demand reparation on account of the claims of the British railway companies, and stated that there were several British railway companies in Venezuela "which have had claims against the Government in respect of services rendered and damage done to property by Government troops, and in some instances for default of guaranty or else by depreciation of Government bonds."

You are much more familiar with diplomatic history than I am, yet I venture quite respectfully to challenge my honorable friends, our opponents, to produce at their leisure another instance where one government has endeavored to extort by force from another government the losses the subjects of the former government have suffered by the depreciation of the bonds of the latter government. There may be such cases, but I am not aware of them. On November 13, 1902, the German Government informed the British Government that "in the first class of claims Germany demands the settlement of her claims arising out of the Venezuelan civil war of 1898-1900." England, in the first instance, puts forward claims on account of "the illegal removal and destruction of English merchant ships," being the trifling cases of the fishing boats already discussed; and you are now face to face with the true purpose of all this hectoring of Venezuela over these trifling and disputed injuries. In the event of the two powers having recourse to coercive measures, it was agreed that they would both make further demands. Germany would demand the settlement of her claims arising out of the present Venezuelan civil war, amounting at the present time to approximately 3,000,000 bolivares, and also the guaranteeing of the claims of the German creditors, especially those of the Disconto Gesellschaft, amounting to approximately 41,000,000 bolivares. England would likewise assert the demands of her subjects, especially the claims of the English railways in Venezuela, on account of the damage done their lines and failure to meet deferred liabilities; these claims of the second class to be combined according to their several natures by the adoption of "the joint proposals recently agreed upon by the Disconto Gesellschaft and the several groups of English creditors interested in the settlement of the Venezuelan loans of 1881 and 1896. The German Government is of the opinion that these proposals are just, and may therefore be considered as a suitable basis for a settlement of the Venezuelan external debt." And here follows an extraordinary proposition to emanate from two such governments: "Among the above-named proposals is contemplated the floating of a



new loan." Is there in the archives of any foreign office such a proposal as that? Two great governments and two great foreign ministers engaged in floating loans for the advantage of the Disconto Gesellschaft and other promoters of foreign loans; and these commercial propositions are to be made the basis of war—the ground for sinking ships, bombarding forts, and closing the ports of Venezuela against the world. Does the history of diplomacy furnish another instance of the kind? It may be so, but I doubt it. So, at last, these two great European monarchies, fresh from signing the conventions of the peace conference, have entered into an alliance for the purpose of extorting from this weak and distracted country such reparation as they say they deem proper, and for such demands as they say they deem just, and, above all, to float a new loan; and at the same time, in the case of Great Britain, refusing even to consider the claims of Venezuela based on the depredations committed by the ship *Ban Righ*, made a man-of-war at London, manned by her subjects, and, after her delivery to General Matos, welcomed in her ports. On November 17, 1902, these two great nations further agreed that if joint action against Venezuela is undertaken, "it should be maintained until the demands of both sides as finally agreed upon are satisfied. \* \* \* The British claims, as Count Metternich presumed, were capable of classification. Those on account of recent cases of unjustifiable interference with the liberty and the property of British subjects, including the shipping claims, would rank first. Claims for injury to British property during the late revolution and that which placed President Castro in power would come next; and, in the third place, the claims of the bond holders. His Majesty's Government did not, however, desire in their demands upon Venezuela to draw a distinction between the various categories. Their object was to have a general settlement. They were of the opinion that to advance one class of claims or, at this stage, to specify any particular amount would diminish the chance of securing in all cases the reparation which they considered to be justly due. If, therefore, the answer of the Venezuelan Government to the communication recently addressed to them would prove unsatisfactory, or if, after a reasonable interval, it should appear that no answer at all would be returned, His Majesty's Government would propose to proceed to measures of coercion and to seize the gunboats. If the seizure of the gunboats should not produce the desired effect, it would of course be necessary to decide what should be the next step. This point would be carefully considered."

I beg your honors to also consider that there is an ample justification for the very profound interest the United States feels in this controversy in the statement I have just quoted. We have no desire to have trouble with any country in the world. The country in

which we now are placed us under great obligations, because in the neighboring harbor of Delft our earliest pilgrims found shelter and sailed from thence to start our country on its career. We would not have achieved our independence, probably, but for the assistance of France. We have for two hundred years been indebted in manifold ways to Great Britain. Our obligations to Germany are innumerable. In the very crisis of our civil war Russia probably saved us from great humiliation and great disaster; and to Italy all the world is under obligations for the charm and grace and culture she has added to human life; and we sincerely wish to remain at peace with them all.

Eighty years ago, however, when we were a small and weak nation, our Government thought it its duty to announce that it would not view with satisfaction the further colonization of any part of the American continent by any European power. Such a policy is not a part of the law of nations, and we have never pretended that it is, and no nation is bound to consider it as a part of international law; but there are national policies which must be taken into account by practical statement. Therefore, when it was learned that two great nations whose combined fleets are irresistible at sea had entered into an alliance to send those fleets to the Caribbean Sea, and had said to each other, "If the seizure of gunboats should not produce the desired effect, it will be necessary to consider what should be the next step," the United States naturally felt anxious that, if possible, this great tribunal of international justice should be given jurisdiction over questions which otherwise might at any moment lead to the employment of force and the taking of such next steps as it would be extremely embarrassing to retrace. If you make unnecessary war, and the seizure of vessels is not sufficient to extort compliance with your demands, you must land troops; and if you land troops and the enemy retreats, you must pursue them until you bring them to a decisive action or take possession of the country; and if it is a just and necessary war, nobody would have a right to complain.

We insist, however, that since The Hague conference we have a tribunal to which questions of the kind in controversy between the allies and Venezuela ought to be referred. We do not at all say how such questions ought to be decided, but we do say that they would receive impartial consideration here, and the decision ought to be cordially accepted by the parties to which it is adverse. We can not approve Great Britain and Germany entering into an alliance against a country like Venezuela, by which they agree to extort payment of claims never impartially examined, as well as losses incurred by bondholders of Venezuela through depreciation of their bonds. Those two great nations agree as their first step to seize the gunboats of Venezuela, and, if that is not sufficient, "then they must consider what

should be the next step." It is because one such step is only too likely to lead to another and another, that we are here representing the Government of the United States and the Government of Venezuela.

Under date of November 11, 1902, Lord Lansdowne telegraphed to the British minister as follows:

Make a communication in the following terms to the Venezuelan Government, in form of a note: His Majesty's Government regrets the unsatisfactory character of the reply to the representations contained in your note of the 30th of July. They are unable to admit that the serious causes of complaint put forward can be met by a refusal to discuss them, but at the same time Great Britain refused to discuss the case of the *Ban Righ*.

There is a very interesting history of our civil war written by the Comte de Paris, who served with honor for a brief period in our army. He says that both the *Shenandoah* and the *Alabama* had been guilty of vicious practices which should have closed the entrance to British ports to them from the beginning. Those practices were no more vicious than those of the *Ban Righ* against Venezuela, and, as I have already pointed out, those Confederate cruisers had the flag of a recognized belligerent power at their mastheads, while the *Ban Righ* was hoisting one flag after another, without a lawful right to any flag. The Comte de Paris adds, "with regard to the *Alabama*, her course from the beginning was a perpetual violation of the law of nations. As soon as she had received her armament this vessel, constructed in England, carrying English guns, with a crew of Englishmen, started on her cruise. Consequently the Americans did not greatly exaggerate the fact in calling her an English pirate, and had a perfect right to call upon the British Government to seize her as soon as she should appear in any English port. No attention was paid to this request. The *Alabama* proceeded to Nassau, where she met with the kindest reception on the part of the authorities. She gave serious offense to the British flag by falsely hoisting it and using it to disguise her nationality. This act of piracy should at least have excluded her from British ports." I do not wish to unduly emphasize this matter, but that is precisely what was done by this ship of General Matos, and yet the British Government refused to allow even any diplomatic discussion of the subject. I have no doubt they will offer some plausible explanation of their conduct, but I can not myself imagine any.

The Venezuelan Government naturally felt aggrieved, and in their conservative and deprecatory dispatch, already quoted, they said what appears in a telegram from the British minister at Caracas to Lord Lansdowne, dated November 17, 1902:

In reply to my note sent in accordance with the instructions contained in your lordship's telegram of the 11th instant, the Venezuelan Government expressly regarded that it might be inferred that the Venezuelan complaints in regard to the *Ban Righ* and to the attitude taken by the authorities of the colony of

Trinidad had not been examined by His Majesty's Government, as, if this had been the case, those complaints would not have been attributed to caprice on the part of Venezuela. Attention is called to the eagerness of His Majesty's Government or of His Majesty's legation to discuss matters of comparatively secondary importance when contrasted with the paramount interest felt by Venezuela in obtaining due respect for her claims which arise from the grave injuries caused by the *Ban Righ* and the facilities afforded to the revolutionaries by the colonial authorities in Trinidad.

They add that Venezuela has done nothing contrary to courtesy or international law, and that she can not therefore be held justly responsible for the present situation. The Venezuelan Government would be much gratified if His Majesty's Government would express some desire to come to an understanding by which the injuries caused by the *Ban Righ* and by the authorities of Trinidad would be remedied, and they maintain that their claims in connection with those two subjects have hitherto been met by the most unfair refusal of His Majesty's Government to consider the matter. The note continues with the statement "that the Venezuelan Government have most gravely considered the serious nature of the injuries which resulted from the treatment of the *Ban Righ* and the action of the Trinidad authorities, and that they ask nothing from Great Britain which is not a legitimate consequence of the situation thereby created. It therefore appeals to the sense of fairness of His Majesty's Government to effect a settlement of the present abnormal and regrettable situation by placing matters on a basis of mutual agreement."

This appeal is made after the allies had signed the conventions of The Hague conference and after Venezuela had expressed her cordial desire to adhere to those conventions. What could be more in the spirit and the letter of that conference than that appeal?

It therefore appeals to the sense of fairness of His Majesty's Government to affect a settlement of the present abnormal and regrettable situation by placing matters on a basis of mutual agreement.

I have already said that there is always much to be regretted in the situation of Central and South America for the last three hundred years; but no government, however civilized, could more completely put itself in the spirit of The Hague conference and in the spirit of the conventions of that conference than Venezuela did by this deprecatory, almost beseeching, appeal to her great and powerful antagonist; and it would really seem as if such words of entreaty would compel a kindly response, even if the parties had been equally strong, but the enormous disparity existing imposed the greater obligation upon the allies to respond favorably to it.

The answer to that appeal is not contained in any reply to Venezuela, but in a dispatch to the commander in chief of the British navy on the North American station.

In concert with the German Government, His Majesty's Government have decided to enforce claims by seizure of all Venezuelan gunboats. Telegraph when you are ready to commence operations.

Of course, one encounters in the course of a long life many extraordinary and unexpected conjunctions of circumstances, but I have

never found anything which caused me greater surprise than the circumstances I have just narrated—this appeal by a weak nation, struggling with an insurrection, to two such powerful nations as Great Britain and Germany, and their answer to it being a dispatch to the commanders of their naval forces to proceed to the seizure of the defenseless vessels of Venezuela: “Telegraph when you are ready to commence operations.” And the character of the claims thus to be enforced by the great navies of these great powers is stated by Lord Lansdowne, November 20, 1902:

First. Payment of the German claims arising out of the civil wars of the years 1898–1900.

Second. Settlement of the claims arising out of the present civil war in Venezuela.

Third. Guaranty for the claims of German firms on account of the building of the slaughterhouse in Caracas, amounting to a round sum of 800,000 bolivars.

Fourth. Guaranty for the payment of the claims of the German Great Venezuelan Railway Company for interest and sinking fund of the Venezuelan loan of 1896.

“The Imperial Government also concurs in the further proposals of His Majesty’s Government to demand at once from the Venezuelan Government the acceptance in principle of all the German and English claims, and to reserve a separate settlement of claims for a mixed commission to be appointed later. The Imperial Government, however, attach importance to the following point: That the German war claims under paragraph (a), which have already been thoroughly investigated and have been presented to the Venezuelan Government for the amounts declared, shall not be subjected to fresh examination at the hands of this commission. Second. The German Government agree that the measures of coercion against Venezuela shall be undertaken as soon as possible.”

Then, however, it did occur to the German Government that the last communication between her and Venezuela had been six months before, and that in that communication there was no threat of war. They therefore leaped over six months in their eagerness to begin war, but they had the grace to say: “It must, however be taken into consideration that the last notes between the German and Venezuelan Governments were exchanged more than six months ago, and were not couched in a tone which would justify an immediate resort to measures of coercion. The Imperial Government therefore considers that they should make one last representation to the Venezuelan Government, and therefore propose that Germany and Great Britain should each simultaneously present an ultimatum, in which each power should represent its own collective demands, referring at the same time to the demands of the other power. The Imperial Govern-



ment does not consider that this course would result in a postponement of active measures, as the communication might be presented at once, a period of twenty-four hours being granted for compliance."

That is, the German Government was in friendly correspondence with Venezuela in May, 1902, in which she demands the settlement of certain claims and suggests arbitration of them. Venezuela is engaged in combating an insurrection, and replies that her settled policy has been to refer all such claims to her own judicial tribunals, and she can not admit that Germans should have a preference over native Venezuelans in that respect. Eight months thereafter Germany suddenly launches at Venezuela an ultimatum, giving her twenty-four hours in which to comply with the demands made upon her, and unless she does so war is to be declared.

Of course, one can readily exaggerate one's cause, but that again recalls to me the reason why the United States is so profoundly interested in reaching a decision in this matter by this tribunal. As I have already said, no European nation strong enough and willful enough to go its own way will be debarred by any national policy of the United States from pursuing the course it thinks desirable for its own interests, and if two great European powers, or one great European power may, after six months' silence, deliver an ultimatum to a South American republic distracted by an insurrection, that within twenty-four hours she must comply with what is demanded or war will be made upon her, there is no telling what serious difficulties may arise; and it is in the hope of avoiding such difficulties in the future that I feel it is necessary to bring to your attention in such detail the facts of this situation before the war actually began. The interest of the United States in this tribunal is shown in the fact that we are to-day in receipt of a communication from it expressing its very great pleasure in knowing that this court was at last constituted and that the arguments in this controversy would now proceed; and you will readily understand why their interest is so great. The United States hopes that hereafter questions of this character will not result in ultimatums requiring an answer in twenty-four hours or a declaration of war. That Government believes that all such questions as were in dispute between the allies and Venezuela can find a peaceable solution here, not necessarily the very best solution, not necessarily an entirely satisfactory solution, but a peaceable solution.

Take the question of the depredations of the *Ban Righ*. Why should it not have been submitted to this tribunal? Why require Venezuela always to cherish a sense of injury and injustice because she was denied a hearing? Her demand was only the old demand: Strike, but hear. The allies struck, but they would not hear. We say, "Hear, and then strike," if striking is justified by The Hague Tribunal. If the United States was entitled to bring Great Britain



to the bar of international justice at Geneva for the depredation of the *Alabama* and the *Shenandoah*, why is not Venezuela entitled to bring Great Britain to the bar of this court to answer for the depredations committed by the *Ban Righ* against her under very similar circumstances? She is a weak nation, but that is no longer an answer. This court was constituted to abolish that answer, and therefore we declare that she was entitled then and is now entitled to demand the judgment of this court whether the depredations of the *Ban Righ* were in accordance with international law or contrary to it. After the principles to which Great Britain gave her adherence in the treaty of Washington, principles indispensable to the existence of the Geneva arbitration, I confess it is difficult to understand why she is not responsible for the depredations of this unlawful vessel. But that is a question about which opinions may well differ. The question about which, we think, there can be no doubt is whether Venezuela is entitled to a hearing. Decide against her and she will accept your decision; but it must be a decision after a hearing. It must be a decision by an impartial tribunal, which Great Britain refused to allow.

This court has been constituted. Why should Venezuela not be heard? Consider some of the other grave questions about which the South American States feel the profoundest and keenest interest. Whether an independent State is or is not bound to accord diplomatic intervention and diplomatic discussion of the claims of resident foreigners when she has provided judicial tribunals for the investigation of such claims, is a question upon which I do not now express an opinion one way or the other. It may well be that it would prove to be in the interest of the advance of civilization that this tribunal, hearing the question fully presented and fully discussed, should decide that the right of diplomatic intervention and of settlement by extraneous authority does attach to any claim presented by a person residing in one country who has retained his citizenship in another country; or, after such hearing and deliberation, it may well be decided that it is better to notify all persons proposing to settle in a foreign country while retaining their citizenship in another country, that if they elect to avail themselves of the supposed advantages of such residence they must accept the burden of having their claims adjudicated by the same domestic tribunal which adjudicates the claims of native citizens of the country. I do not attempt to decide. I have no competence to decide which of these two contentions is correct. All that I say is that this is the proper place to bring such controversies—not at all because this court possesses supernatural wisdom; not at all because its members are other than men and with the ordinary limitations of men, but because it is set apart in order that all the nations of the earth which wish to bring their controversies here

are sure to secure an intelligent and impartial hearing, consideration, and decision of such controversies. When the duty devolved upon the late lamented President of the United States to name members of this tribunal it is well known that he sought the highest type of American jurists, and accredited here men who carried with them the respect and the confidence of their countrymen in the fullest degree. He named the only living ex-Presidents of the United States—President Harrison—a distinguished jurist before he was a Senator and after he was President, and President Cleveland, whose state of health prevented him from accepting it and who regarded it as a great distinction to be offered the position, and regretted that he was unable to accept it. I repeat, it is not because the questions brought here will always be decided wisely, but because they will be heard by learned and distinguished jurists, and will be impartially, even if mistakenly, decided.

It is a very interesting fact in the history of international arbitration that, so far as I am aware, the first suggestion of the creation of such a tribunal as this emanated from Simon Bolivar and in Venezuela. In 1825 that illustrious patriot, who had devoted his life to securing the independence of Central and South America, succeeded in having a congress meet on the Isthmus of Panama, and he persuaded that congress to adopt a resolution providing for a court of international justice, to which all South American countries who might be involved in controversies with each other should come when such controversies could not otherwise be settled; and then, with a prescience which is most remarkable, he induced the members of the congress to extend an invitation to every civilized nation on the globe to join in the realization of his golden dream. Since then other men and other countries have pursued the same object, and at last it is practically realized in this tribunal.

. Another question of great importance is: If claims by foreign residents are to be heard by tribunals other than domestic, then how is protection to be afforded against exorbitant and unjust awards? It is reported—I do not know with what accuracy—that some of the mixed commissions sitting at Caracas have held that the Venezuelan people are responsible for all injuries by insurrectionary parties which were operating in districts outside of the control of the central government. If so, Venezuela is probably aware that the United States has asserted the opposite principle. She knows that Great Britain has asserted it, and she will certainly feel she is unjustly treated if she is made to pay out of her impoverished resources claims which the more wealthy and civilized countries decline to pay. Such a question is one eminently fitting to be brought to this tribunal: What are the proper limitations of the responsibility of a govern-

ment against which an insurrection is being waged for injury suffered by foreign residents in consequence of such insurrection? It is not a question which ought to be submitted to the final decision of any umpire on a mixed commission, because one umpire upon such a commission may decide one way and another a different way. If such contradictory decisions have been rendered, how is Venezuela to know which should be respected? If the question was brought here it would be settled once for all and for all countries. This is one of the beneficent ways in which, as we understand it, this tribunal can increase the chances of peace among the nations. I have indicated only a few questions which have already arisen, but others are likely to arise of equal difficulty and equally needing a final and authoritative decision.

For the reasons already given, Great Britain and Germany were not, in our opinion, entitled to issue ultimatums to Venezuela and enforce them at the cannon's mouth, but they ought to have urged her again and again, considering her weakness and distraction, to submit the claims they presented to this court. Suppose, in the case of the alleged depredations of the *Ban Righ*, Great Britain had said:

We can not admit your contentions. No doubt you have suffered grievously, but we have not infringed our duty toward you. You think we have. We think we have not. Very well, we will go to The Hague Tribunal and see which of us is right.

But these two great nations only say:

Pay us what we demand. There are our conditions. Unless you comply with them at once we will sink your few small boats, blow up your few defenseless forts, and close your few ports to the commerce of the world.

When Venezuela insisted that she was entitled to ask every foreign resident enjoying her hospitality to submit himself to her domestic tribunals, and Great Britain and Germany denied her right to demand it, did they say: "We have assisted to institute a court at The Hague which will render an impartial decision upon our respective contention. Bring it there." Not at all. They grasp her by the throat and say: "Pay us the money we demand;" and as she does not do so, they sink her ships, bombard her forts, and close her ports. And now they come here and ask The Hague Tribunal to give them an award of merit, and to say to them, "Well done, good and faithful servants" of the Hague conference. They acted as if she was not entitled to diplomatic courtesy; and because she was poor and weak, that she had no right to demand that they bring their controversies before this tribunal. They brought her instead before the throats of their cannon, told her what to do within twenty-four hours, and she was compelled to do it, bowing to their "superior force," as she declared,

There is no exaggeration in what I have said. Lord Lansdowne distinctly stated that "the claims that rank first are not subjects for arbitration, they are not suited for examination." If honest and just claims, why are they not suited for examination? The claims of the merchantmen whose ships were destroyed by the *Alabama* and the *Shenandoah* were submitted to arbitration. Why should not the allegations of injury to these small fishing boats be submitted to arbitration? Not suited for settlement by arbitration! There is but one answer to an allegation of that kind. Honest claims are suited for arbitration; dishonest claims are not suited for arbitration. The demands of the German subjects in connection with the Venezuelan civil wars of 1898 and 1899 were also required to be immediately recognized by the Venezuelan Government.

Mr. COHEN. You ought to have read the preceding words:

The cabinet had decided at its last meeting to accept in principle the idea of settling the Venezuelan dispute by arbitration, and we had since ascertained that the view of the German Government was in accord with our own. We considered, however, that some of our claims were of such a kind that we could not include them in the reference.

Mr. MACVEIGH. If they were honest claims, why not include them in the reference? I do not wonder the gentleman feels desirous of modifying such language as much as possible, but it is taken from their own Blue Book.

I have always understood that a fundamental principle of law is that judgment must precede execution, for judgment involves inquiry and examination; and there is no country, so far as I know, whose jurisprudence will compel the payment of a claim until it has been judicially examined and thus passed into judgment. No matter if it be said that it is too just to be examined, all systems of jurisprudence reply, if your claim can not be examined it can not be enforced. These claims, however, were declared too sacred for examination. An alleged injury—which is denied—to a little fishing boat worth \$200—is that a claim too sacred to be investigated? The burning of another abandoned little boat, said to be employed in the service of the insurrectionists—is that a claim too sacred to be investigated?

It is indeed impossible to speak of such a condition of affairs with the patience one would desire. One could speak with far more patience if Venezuela, in her weakness, was making such demands of Great Britain and Germany in their strength; but we well know what answers to such demands they would have made. With their fleets in the Caribbean Sea, they advance from one demand to another. Great Britain arbitrarily demands \$27,500. We know not how it is to be distributed. We have never heard who received it. We do not know anything about it. Italy came forward and demanded the like sum of \$27,500. We do not know upon what basis it was demanded.

We do not know to whom it was allotted. We do not even know why she demanded exactly the same sum as Great Britain. We know nothing about it. Germany, it was supposed, was willing to be as moderate as England and Italy, but, owing to some misunderstanding between Berlin and Washington, Germany demanded and received \$325,000, for not one dollar of which large sum were we given any account; so that Venezuela, yielding to a "superior force," paid \$380,000, and you are asked to declare that such proceedings merit the approval of the high court of which you are members, so that hereafter any European nation alleging a claim against a South American state may send a powerful fleet into her waters, and by making war upon her exact as much money as is demanded.

I said that the Monroe doctrine, while not a part of the law of nations, as nothing is which has not been accepted by the great majority of the civilized states of the world, is a settled policy of the Government of the United States, a doctrine it has cherished for eighty years, and never cherished with such unanimity as to-day. It is therefore exceedingly undesirable that claims such as these now under consideration should be again collected, before they are impartially examined, by war. Why should not all claims of this kind be examined? Why should not all questions in dispute, unless they involve some national policy, or national sovereignty, or national territory, or national honor, be brought here for examination, for discussion, and for decision? We think they ought to be, and it is for that reason that we are here.

I will not detain you by referring to the voluminous correspondence printed in our appendix, but it shows that the disputes between Germany and Venezuela follow the same general lines as those between Great Britain and Venezuela; and the same is true of Italy, which, at the last moment, became associated with these two powers and sent a part of her navy also into the Caribbean Sea to assist in overawing Venezuela.

As I have already said, it is due to Germany to declare that seven or eight months before her fleet was sent there she did propose arbitration, not of the question which the South American states think vital; that is, whether they are bound to accord separate preferential treatment to residents who are not citizens over their own citizens in their own country, but that it should be referred to a mixed commission to ascertain what was due to the German residents in Venezuela who prefer to maintain their German nationality. That presents a most serious question, for in the modern world it is found exceedingly undesirable that great numbers of immigrants should reside in any country and yet refuse to accept the burdens of its citizenship. The United States has successfully assimilated a great many men of a great many nationalities, but it is because when coming to us they



become American citizens. They do not lose their affection for the fatherland, but, having elected to reside all their lives under the American flag, they accept the burden of loyalty to it and cast in their lot for good or ill with their fellow-citizens born upon the soil. Still it might be that after full and careful deliberation special tribunals ought to be organized to adjudicate the claims of resident foreigners in one or more of the republics of Central and South America. If so, you could indicate how such tribunals should be organized, and I am sure the whole world would accept your decision; but a decision enforced at the cannon's mouth will always be a source of bitterness and hatred.

We must, however, never forget that we live in a rough, work-a-day world; not in a world of ideals, not in a world of illusions, but in a hard, practical world of fact, and of course in such a world questions will arise more or less difficult of peaceable settlement; but I believe a change came over the nations upon this subject from the day this court was instituted. Theretofore many weak countries might have yielded to superior force and not deeply resented it, but ever since this pact of peace was signed a great change has come. International justice is now administered here to all peoples—strong and weak, great and small—alike, and no nation will ever again patiently submit to violence and injustice. Submit she may, but not in patience or the spirit of submission, because they believe such controversies should now be submitted to arbitration. This is especially true of all American countries. There has hardly been a year in the last century in which some great body of influential American citizens has not endeavored to advance the principle of international arbitration. No language is more instructive on this subject than the language of Secretary Hay in his instructions to the gentlemen we sent to The Hague conference, and no country welcomed the successful issue of those deliberations more heartily than we did; and in speaking for the United States and Venezuela I speak, I feel sure, the sentiments of all the republics of Central and South America. All they ask is: If we are wrong, give us a hearing before an impartial tribunal, and we will accept its decision; but do not, because we are weak, send the combined navies of great powers to overawe us and compel compliance with demands the justice of which we have constantly denied; and all we ask is that this court, in the very beginning of its career of usefulness, should not encourage the making of war except upon grounds of indisputable justice and of indisputable necessity. In the century which was closing when The Hague conference met, the United States had been a party to fifty arbitrations. One of them has a very striking relation to the present controversy. American citizens obtained from the Government of Venezuela a concession to navigate the waters of the Orinoco. In



the disturbances which followed an insurrection in that country, the vessels of the company were seized and used alternately by the insurrectionists and the Government. They were greatly damaged. The pacific traffic they had been authorized to pursue was utterly destroyed and the company suffered very serious pecuniary losses. The Government of the United States presented the claims for such losses to the Government of Venezuela. Venezuela was still engaged in suppressing the insurrection, and, having regard to her embarrassed condition, the United States pressed the claim, which was a meritorious one, temperately but firmly, upon the attention of the Venezuelan Government. We had just emerged from a successful war. We had just discharged a million men to the walks of peace, but there was no word in all the correspondence of violence; there was no threat of force, but there was the moral pressure of a just claim, persistently urged, in language not destructive of the self-respect of the weaker and resisting nation. It required time. Let us always remember that whatever we may be, God is never in a hurry. It required time. So do most things worth accomplishing in this life. But at last, after twenty years of steady pressure, the Government of Venezuela agreed to refer the claim to arbitration. It was arbitrated, and the award made was paid by Venezuela as soon as she was able to do so. Since the institution of this court no such delay would be necessary.

May it please your honors, either the war in question was, in the judgment of this tribunal, just and necessary or it was not. We think it follows from the nature of this tribunal that you can not award preferential treatment for the conduct of these allied powers, because, as I have already stated, we believe international law is now very different from what it was before The Hague conventions were signed by the leading nations of the earth. Every nation on the globe is now confronted with a wholly different standard of action towards every other nation than it was before that conference assembled, and it was a part of the very purpose of the august sovereign who called it; it was a part of the very purpose of the good and wise men who took part in its deliberations, that there should be a parting of the ways. They had no competence and they had no desire to interfere with the political divisions of the world as they exist. They were legislating only for the future.

And now we wish briefly, but as strongly as possible, to restate in succinct form our objections to the granting to the blockading powers the preferential treatment for which they ask.

(a) In the first place, we say such preferential treatment ought not to be granted, because these three powers exacted from Venezuela, at the cannon's mouth, such preferential treatment as they wished. I wish to impress that fact as clearly as possible upon your minds.

They had Venezuela by the throat—utterly helpless. They made their demands for preferential treatment clear, distinct, and definite. They said: Before we release you, you must pay Great Britain \$27,500; you must pay Italy the same sum, and you must pay Germany \$325,000. Those were the three preferential payments they demanded and extorted. Those sums were paid as the price of lifting the blockade. We say it is now too late to ask for further preferential payments.

(b) We also object to such further preferential treatment because Great Britain, Germany, and Italy distinctly agreed to the proposal of Venezuela that all remaining claims should be treated upon the basis of exact equality. The proffer made by Venezuela and accepted by the allies was expressed in these clear and unequivocal words:

Venezuela will pay 30 per cent of the total income of the ports of La Guaira and Puerto Cabello to the nations that have claims against her, and it is distinctly understood that the said 30 per cent will be given exclusively to meet the claims mentioned in the recent ultimatums of the allied powers and the unsettled claims of other nations that existed when the said ultimatums were presented.

They extorted \$380,000 for themselves alone. They extorted a further agreement that Venezuela was to set apart 30 per cent of the gross revenues of those two ports to be applied to their remaining claims of the allies and the claims of all other creditors. It is impossible to use language of greater definiteness or more clearly placing all the claims of all the creditor nations upon a basis of equal treatment after the allies had been allowed to extort \$380,000 for alleged claims of which they refused any examination, as has already been stated. Having accepted preferential treatment to that extent they accepted equality of treatment for all their other claims, and there is no reason whatever why they should now be allowed to change their attitude respecting the matter.

(c) Such further preferential treatment is also objected to because equality is equity, and as all nations are equal in the forum of international law they should be accorded equal treatment by this tribunal, unless some valid and conclusive reason can be adduced for denying them such equality.

(d) Such further preferential treatment is also objected to because the only precedent, so far as we have been able to discover, applicable to the present controversy is that presented in the similar case of China. A number of the militant and powerful nations of the earth joined in extorting from China payment of alleged claims for injuries suffered by them and their respective subjects and citizens. No pretense has ever been made in any quarter that, after having captured Peking and brought the Government of China to its knees, excessive leniency or moderation was displayed by the victorious

powers in fixing the sum upon payment of which China would be restored to the possession of her capital. Great Britain, Germany, and Italy, who are now presenting to this tribunal their claim for preferential treatment, made no such claim in the case of China, and they were all parties to the agreement in that case. We have published in the appendix the agreement for the division of the sum demanded by all the allies, showing that the nations which did not join in the warlike demonstrations were treated on the basis of exact equality with the nations which did join in it.

(e) We also object to such further preferential treatment because the vast disparity of armed forces at the command of the allies by land and sea ought to have prevented those great powers from having recourse to war except in the last extremity. If Venezuela had been courteously asked to carry these disputed claims to this tribunal, and if she had refused then they could have come here with some grace and asked for an award of merit. But instead of doing so they ask not an impartial hearing by this tribunal, but an immediate compliance with their demands in the harshest possible form in which those demands could be presented.

(f) Finally, we say that such further preferential treatment is objected to because this tribunal was organized to advance the cause of peace among the nations and not the cause of war. Venezuela may have committed many mistakes, she may have committed many wrongs, she may, in her weakness, have exhibited an unwise opposition to demands she was not able to resist, but when confronted with the necessity of submitting to those demands she declared that in doing so she simply bowed to superior force, and even then she preserved her national dignity by demanding that all her creditors should be placed upon the basis of exact equality, and all claims ascertained to be just should be paid one equally with another, and she insisted upon bringing the question here, while her representative, in very vigorous language, objected to allowing such preference as these powers demanded. On January 30, 1903, Mr. Bowen, representing Venezuela, declared:

I object to paying first the claims of the allies and the claims of the other nations afterwards because, first, I think it unjust, unfair and illegal to tie the hands of the said other nations for the period of five or six years that it would take to pay the claims of the allies; second, if I recognize that brute force alone can be respected in the collection of claims, I should encourage the said other nations to use force also; third, if the allied powers wanted preferential treatment, they should have asked for it in the beginning and should not now propose it after I understood clearly that all the conditions of the allied powers had been stated.

There could, therefore, have been no misunderstanding on the part of the allies about the attitude of Venezuela and her representative upon this subject, and by a decision in favor of such equality

of payment you will help to keep the nations of the earth in the paths of peace, to realize the noble aspirations which initiated The Hague conference, and of the distinguished statesmen, diplomatists, jurists, and soldiers who gave to all its deliberations the full measure of unselfish devotion.

May it please your honors, I wish again to thank you and all the counsel for the courtesy extended to me in allowing me at this time to present so elaborately my views of the controversy awaiting your decision, and my closing words are: We invoke your decision in our favor only because we believe it would be in happy conformity with the most essential interests and the legitimate views of all powers, by aiding "the establishment of the principles of justice and right upon which repose the security of States and the welfare of peoples," for we also know "the nations have a great need of peace;" and I believe with a faith which never can be shaken that it is only by recognizing these truths that any nation can attain to true dignity and true glory.

## ARGUMENT OF M. BUENZ ON BEHALF OF GERMANY.

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### MEETING OF NOVEMBER 5.

M. BUENZ. Your Excellency and Gentlemen: In presenting our oral argument we will not risk the "favor judicum" by giving to it an undue length. Unfortunately we will have to plead our cause in a language with which we are not familiar, which is all the more a reason to refrain from any unnecessary length of our remarks. I therefore beg leave to enter right away into my argument proper.

### PART I.

In our printed briefs we have tried to explain and at the same time to prove by the appended documents how for years we tried our very best to induce Venezuela to come to an amicable arrangement with us about the claims which we honestly believe to have against her. Those claims had for a number of years been the object of a diplomatic correspondence between ourselves and Venezuela, and many had been the oral representations of our diplomatic representatives to the Venezuelan ministers urging an amicable settlement. For the nature of the claims and for our earnest endeavors to induce Venezuela to come to an understanding with us about their settlement, as well as for the persistent refusal on the part of the Venezuelan Government to accede to our propositions, we may, I hope, refer to the contents of our printed briefs, our case and counter case and of the documents appended to them, and to the brief for Venezuela. We therefore beg leave to presume the tacit consent of the court to this proposition unless ordered otherwise. In reviewing the arguments of our opponents as given in their printed briefs and the evidence presented in the documents by which those briefs are accompanied we will, for obvious practical reasons, begin with our answer to the printed and oral remarks of the representatives of Venezuela.

Therefore, beginning with Venezuela, we wish to say:

The question submitted for decision by the signatory powers whether or not the blockading powers are entitled to preferential treatment in the payment of certain claims against Venezuela is, in our opinion, perhaps not so much dependent on the question whether or not the war made on Venezuela by the blockading powers was necessary or justified or not, or whether Venezuela's conduct which

led up to the war was justified or pardonable under the circumstances. Neither the convention of July 29, 1899, nor the agreement of May 7, 1903, refer as far as we can see this question to the decision of the court. While therefore we are not in the least afraid that any tribunal which might be called upon to pass judgment on this question would declare the war the blockading powers made on Venezuela unnecessary and unjustified, we earnestly doubt that this high court would consider it within its province to pass judgment upon that question. If we are right in this opinion, a considerable part of the arguments presented by the representatives of Venezuela in their brief and in the oral pleadings by Mr. MacVeagh would at once seem to be eliminated from the consideration of the court.

From our point of view the right of the blockading powers to preferential treatment in the payment of their claims as specified in article 3 of the agreement of May 7, 1903, emanates conclusively from the considerations which are given and at length expounded under I 1-3 and II (pages 6 to 14) of our printed case. As shown by us there that right flows: First, from the negotiations between ourselves and Venezuela previous to the signature of the protocol of February 13, 1903; second, from the steps taken by the blockading powers to enforce their claims; third, from the natural obligation on the part of the Venezuelan Government to pay the expenses incurred by the blockading powers; and fourth, from considerations of fairness and equity in so far as the other creditor powers owe it exclusively to the military operations of the blockading powers that Venezuela has consented to a settlement on diplomatic grounds of all claims against her, and has given, if only in part, security for the satisfaction of those claims.

While for the rest we simply refer to our printed documents to these points we specially wish to direct the attention of the court to the following points: The blockading powers had, before the other powers acceded to the protocol of February 13, 1903, the solemn promise given to them by President Castro that, bowing to superior force, he would satisfy their claims which he recognized in principle and would give them adequate security for such satisfaction. When asked what this security would be, he, through his representative, Mr. Bowen, answered simply: "The customs." So satisfaction and adequate security out of the customs of Venezuela were solemnly promised to the blockading powers, leaving open as a matter of course, for further negotiations between the contracting parties, the question of what amount the customs of Venezuela should be hypothecated to the blockading powers. Until this question would be settled by mutual consent, Venezuela had of course no right to dispose of any part of her customs, to the prejudice of the acquired rights of the blockading powers. It was with this understanding that negotiations were en-



tered into and the blockade was raised. In the course of these negotiations at Washington, between the representatives of the blockading powers and Mr. Bowen, the latter expressly acknowledged that Germany had to give her consent to the arrangement offered by Venezuela by which, out of the 30 per cent of the customs revenues of the ports of La Guaira and Puerto Cabello, the unsettled claims of all other powers were to be satisfied without preferential treatment for the claims of the blockading powers.

This consent was, however, never given. Germany, on the contrary, at once protested to that proposition of Venezuela, and later on only consented to submit the question of preferential treatment to the court of arbitration at The Hague. We therefore, with all deference to the wisdom of the court, hold that the solemn promise given us by President Castro that he would satisfy our claims and give adequate security for such satisfaction will form the ground on which the decision of the arbitral tribunal will be founded, and that it will be found that an arrangement not accepted by us, by which the other creditor powers would come in on equal terms with us and by which, therefore, the blockading powers would have to wait for an indefinite time for the satisfaction of their claims, can not possibly be considered as the kind of satisfaction promised them and accepted by them before they consented to raise the blockade and to enter into negotiations of peace.

As to our claims of the first class, we simply have to say that we have received satisfaction for them from Venezuela. They, therefore, do not stand to the decision of this court. If, in their oral argument, the representatives of Venezuela seemed to contend that in the satisfaction of their claims of the first class the blockading powers had already received the preferential treatment they asked for, we have only to say that we did from the beginning demand sufficient security, not only for our claims of the first class but likewise for all our claims. Our claims of the first class have not been submitted at all and were not of a nature to be submitted to arbitration, because they involved a point of national honor. Having been forced by Venezuela into a military action which, I assure you, we were very loath to undertake, and which put us to considerable expense and inconvenience, we were, in our opinion, after having forced Venezuela into submission, well enough entitled to an unconditional satisfaction of those claims. That we did not ask for more, that, on the contrary, we not only did not ask Venezuela to refund the costs we had to incur, through her fault, by the blockade, and that, for the sake of peace, we consented to arbitration when we would have been entirely in a position to dictate the conditions for peace, proves that we acted throughout the negotiations in the same spirit of conciliation and moderation which guided us all along.

That we did so is amply proven by the fact, admitted in the brief of the representatives of Venezuela, that we proposed arbitration and mixed commissions as early as July 16, 1901, and that Venezuela even did not deign to answer to this proposition. Why, then, say that the blockading powers disregarded the principles of The Hague Convention? It was Venezuela who scorned the proposition, and, on the ground that her national laws did not permit diplomatic intervention in foreign claims, contrary to all principles of international law, persistently refused any discussion of the matter by diplomatic methods.

It is, moreover, not consistent with the facts that at the time when we proposed arbitration Venezuela had been so engrossed with her efforts to suppress an insurrection that she had no time to think about or answer to our proposition. There was no insurrection in Venezuela in July, 1901. Matos did not appear before November, 1901. If, therefore, Venezuela did not answer our proposition, she did it because she did not want to discuss the point, and therefore the blockading powers had no reason whatever to raise the question again at a later date. If, furthermore, the representatives of Venezuela have, in their printed brief and in their oral argument, pointed out repeatedly that, if preferential treatment should be granted the blockading powers, this would mean a reward for their meritorious conduct in making war on Venezuela instead of abstaining from hostilities as the other creditor powers did, we do not fear that this kind of argument might carry any weight with the court. We do not ask a reward nor do we claim any merit for our military action against Venezuela. What we ask for is not a reward but what we consider our right, and a military action which, unfortunately, we were forced into by Venezuela has never been considered by us otherwise than as a heavy burden which we were loath to take upon our shoulders and which, even at the risk of being charged with weakness, we were only too glad to discard. There certainly were no laurels to gain for the blockading powers in a war with Venezuela, and, moreover, we know ourselves entirely free from any desire to look for laurels or unjust spoils by war and conquest anywhere. But no self-respecting nation can afford to renounce her natural right and her national duty to protect, within the limits of her power and of international law, the lives, the liberty, and the property of her citizens against arbitrary and unlawful acts of the governments of foreign countries in which they live in pursuit of their legitimate business. The form which, in an individual case, this protection will take depends, of course, entirely upon the circumstances of the case, and it is therefore not at all inconsistent with equity if in different cases a different "modus procedendi" takes place. We can therefore, neither with regard to this point nor as to the demand of the blockading powers for prefer-

ential treatment, accept the proposition by the representative of Venezuela that equity is equality. On the contrary, arithmetical equality would, in most cases, practically lead to material injustice. That in the recent case of China the indemnity was distributed upon terms of exact equality among all the nations presenting claims can, as explained in our counter case, not be considered a precedent bearing upon our case, because, apart from other reasons, in the military operations against China all powers had, more or less, taken an active part, if even only by forbidding the sale of arms in China.

We do not ask for preferential treatment merely or even mainly because we want the money, nor do we ask for anything we do not honestly believe to be due to us. At the same time we heartily wish and honestly believe that Venezuela will find a way to deal with all her creditors to their mutual satisfaction. She has, in our opinion, even if preferential treatment would be granted the blockading powers, ample means to do so if she earnestly wants to do right by her creditors. Even of the customs revenues of the ports of La Guaira and Porto Cabello 64.8 per cent would, as shown in our printed case (paragraph 2, page 10), remain at her disposal for that purpose. Venezuela having, moreover, recently raised her import duties by 30 per cent, her total income from this source would not appear to be less than what it amounted to before the war. We therefore can not admit that the demand of the blockading powers for preferential treatment would seriously cripple the administration of the finances of Venezuela. While, therefore, we consider our demand for preferential treatment as well founded both in law and equity, we at the same time wish to formally declare that we entirely agree with the representatives of Venezuela in their opinion as expressed on page 18, paragraph 1, of their printed brief: "That the blockading powers are all equally responsible before this court for the acts of each party to the alliance, and that preferential treatment can not be accorded to one of the others unless accorded to all." While, therefore, we accept full responsibility for all acts of Great Britain which would, in the opinion of the court, prevent that power from being accorded preferential treatment, we of course contend that the same principles should be applied if, for instance, the court should find that we were to be admitted to preferential treatment on account of having offered Venezuela to submit our dispute to arbitration. In such a case all blockading powers would, in our opinion, equally enjoy the same treatment. Moreover, since the representatives of Venezuela have confined themselves to attacks on the conduct of Great Britain toward Venezuela only, we consider ourselves justified in refraining from illustrating in detail the arbitrary and unlawful acts by the officials or soldiers of Venezuela against the lives, liberty, and property of our subjects which have given rise to our claims against

Venezuela. The remarks made on pages 109 to 114 of the brief for Venezuela certainly contain many admirable reflections. We are, though, under the impression that they hardly do justice to those who, very unwillingly, have been and may be forced into coercive measures against weaker countries, who on account of their very weakness consider themselves at liberty to defy the strong and their just demands. Besides, we can not consider those remarks as in any way pertinent to the questions at issue in this case, and, moreover, we can not help to entertain grave doubts that they reflect anything but the personal feelings of the representatives of Venezuela. We therefore beg leave to conclude our argument against Venezuela by briefly answering the objections to preferential treatment for the blockading powers as formulated by the representatives of Venezuela on pages 115 to 119 of their printed brief.

First. Germany has, from the very beginning of the peace negotiations, insisted that sufficient security should be given for all her claims, and just this point led, from the start, to the difference of opinion between the representatives of Germany and Venezuela. It is therefore hard to understand how there can be any doubt as to the honest belief of Germany that she is entitled to preferential treatment as to those claims. Our claims of the first class which have been paid by Venezuela have nothing whatever to do with the proceedings before this arbitral tribunal. They were, as has been explained before, of a quite exceptional character, and if I may say so, a kind of earnest money on the part of Venezuela. We did not feel like entering into peace negotiations with Venezuela without having some tangible assurances that this time she was in earnest to live up to her obligations.

Second. We never changed our attitude with regard to the question of preferential treatment for our claims specified in article 3 of the protocol of February 13, 1903. The provisions in part 2 of article 5 of the same protocol prove beyond the shadow of a doubt that the words "as well as similar claims preferred by other powers" can not be construed so as to prove that we consented to equal treatment for the claims of the blockading powers with those of other powers. It really was because we could not agree on this point with Mr. Bowen that we referred it to arbitration.

Third. Equality is not equity, as explained before. In fact, if such a dogma should be admitted into international law its practical consequences would in most cases lead up to flagrant injustice. The endless variety and the countless individual forms of things human can not be subject to a mathematical formula, even if presented in a garb of ethical reflections. Our "valid and conclusive reasons" for preferential treatment are sufficiently expounded in our briefs and in

this argument, and can not be wiped out by any formula, attractive though it may be.

Fourth. If Germany, Great Britain, and Italy did not ask for preferential treatment in the case of China they had sufficient reasons for not doing so. Those reasons could certainly not be used for the purpose of demanding their application in any other case, however similar or different. In fact, there is no similarity whatever between the two cases, as shown by us in our counter case. For the rest, Venezuela has so far, owing to the moderation of the blockading powers, not been asked to refund the expenses incurred by them for the use of their naval forces, as under the principles of international laws she would have been obliged to do, and as has been done by China. She has, therefore, no cause for complaint, especially as, according to the repeated statement of her representatives, she claims to take no financial interest whatever in the decision by the court of the question at issue.

Fifth. Venezuela having absolutely refused to listen to our proposals for arbitration and mixed commissions, and claimed that her national laws and her courts alone should, to our exclusion, fix the merit and the amounts of our claims, it was entirely her fault and not the fault of the blockading powers that a peaceable adjustment of the matters in dispute could not take place. We were, therefore, "in the last extremity," and it is hard to understand why, under the actual conditions, the representatives of Venezuela should have a right to expect that the blockading powers should have insisted upon their proposals for peaceable adjustment confronted as they were by the certainty that such persistence would only lead to evasive or no replies. By her demand to have the exclusive right to examine into the merit and to fix the amounts of our claims, and by her persistent refusal to accede to arbitration and mixed commissions, she set the law for herself and, therefore, has no right to complain now that the blockading powers, howsoever reluctantly, had, by her fault, to resort to coercion. If strength obliges we can not on the other side admit that weakness gives the privilege to deny the strong their right, guaranteed by international law, of cooperation, by diplomatic methods, to the end of an amicable settlement of the claims of their subjects.

Sixth. It suffices to repeat here that the blockading powers, though naturally extremely anxious to appear before this tribunal in the light of nations inspired by the noble sentiments which led to its creation, do not ask for approval for what they did for the purpose of making Venezuela see her duty and respect the law of nations.

If, as Venezuela justly contends in her brief, "this tribunal was organized to advance the cause of peace among the nations and not the cause of war," why didn't she think of that when we asked her to



submit our claims to this high tribunal? Why did she, by persistently refusing to admit us to cooperation with herself in investigating and determining those claims and to bow to the principles of international law, as we repeatedly asked her to do, force our hands to compel her to do so? We were "in the paths of peace," not Venezuela, and, therefore, we, after forcing President Castro into submission conscientiously refrained from harsh demands, not even asking her, as according to international law we would have been entitled to do, to refund the expenses that we incurred by her fault. And we are here to ask this high tribunal of peace, not for approval of what we did, not even for all we might, in justice, claim, but simply and solely for the satisfaction which has been promised us and which, as shown in our briefs, we, in law and equity, may claim as due to us because of serving the cause of the other signatory powers by our military operations.

In his oral argument, Mr. MacVeagh, speaking for the representatives of Venezuela and the United States, said:

There is no doubt whatever, if England, Germany, and Italy can satisfy this tribunal that they had adequate cause for declaring the war, which were of such a character as to merit your approval, then they are entitled to preferential treatment.

If this argumentation be admissible, we feel entirely assured that preferential treatment will be accorded the blockading powers by the court.

We can not, however, share the hope expressed by the representatives of Venezuela in the last sentence of their brief that the decision they plead for would, "in ways we may not know and in days we shall not see, prove in happy conformity with the most essential interests and the legitimate views of all powers by aiding the establishment of the principles of justice and right upon which repose the security of States and the welfare of peoples." On the contrary, while we have full confidence in the wisdom of the court, we can not help to fear that a decision by which preferential treatment would be denied the blockading powers would not only not encourage honesty and fairness between nations in their dealings with each other, but may, some day, cause regret that by opposing us a precedent should have been created which might, howsoever wrongly, lead the young and inexperienced among nations to the belief that they can, with impunity, defy their creditors in their just demands. But "*adhuc sub iudice lis est.*"

## PART II.

Before discussing at length the objections on the part of Venezuela to our demand of preferential treatment for our claims we now enter into the discussion, in detail, of the arguments which have been put



forth in their briefs by our other opponents, we beg leave to direct the attention of the court to a number of points which, while appearing with a surprising uniformity in all the briefs communicated to us, seem to involve a deplorable misconception of the essence of our arguments and which, therefore, call for an explanation.

1. We claim preferential treatment out of the 30 per cent which Venezuela has offered for the satisfaction of the claims of all her creditors, in the first place, because satisfaction and adequate security for all our claims was asked for and promised by President Castro before the blockade was raised and peace negotiations entered into, and because, when asked what such security would be, President Castro, through his representative, Mr. Bowen, simply answered "the customs." So the customs of Venezuela were pledged to the blockading powers for the satisfaction of all their claims before Venezuela made agreements with the other creditor powers.

To this pledge there was no restriction whatever than the tacit understanding that the amount to which the customs of Venezuela would have to be pledged to the blockading powers had to be agreed upon by mutual consent between the blockading powers and Venezuela. The former therefore had a "*jus quæsitum*" when the other creditor powers came in, and Venezuela consequently had no right to make agreements to the prejudice of those rights. The 30 per cent offered by Venezuela for the satisfaction of the claims of all her creditors being part of her customs, it appears from the statement of the facts given above that those 30 per cent remain pledged to the blockading powers alone until either by mutual consent or by arbitration, which we did consent to, that pledge will have been removed.

2. Our opponents contend that preferential treatment might only be granted us if by our military operations we had served the cause of humanity at large. This way of reasoning is entirely contrary to the facts. We do not claim preferential satisfaction out of the 30 per cent on the ground of our merits about the interests of other nations. We simply contend that our action against Venezuela, both military and diplomatic, and its results entitle us to such preferential treatment as at length expounded in our case. This action had, in particular, the result to induce the Venezuelan Government to give us the solemn promise that she would satisfy our claims, and it is simply this promise whose fulfillment we are here to ask for. At the same time we must contend that through that action we have in a great measure incidentally served the cause of the other creditor powers by inducing Venezuela to give her consent to a settlement by mixed commissions of the claims of all her creditors. Moreover, it is owing to the action of the blockading powers that the other creditor powers now enjoy a valuable security for their claims which, later on, will be available for their satisfaction. These incidental merits, however, we do not

consider as giving the blockading powers a title to preferential treatment "de jure" but "ex æquo et bono."

3. It can not be justly contended that, by virtue of article 5 of the protocol of February 13, 1903, the blockading powers have waived their privilege to preferential treatment in the payment of their claims against Venezuela.

Article 5 consists of two paragraphs. The first of these paragraphs stipulates that:

For the purpose of paying the claims specified in article 3, as well as similar claims preferred by other powers, the Venezuelan Government shall remit to the representative of the Bank of England in Caracas, in monthly installments, beginning from March 1, 1903, 30 per cent of the customs revenues of La Guaira and Puerto Cabello, which shall not be alienated to any other purpose.

This paragraph therefore simply specifies how the money flowing from the 30 per cent of the customs revenues of La Guaira and Puerto Cabello, and out of which the claims specified in Article III of the protocol of February 13, 1903, are to be paid shall be administered upon. Those claims are especially those resulting from the civil war of 1902 and 1903, and which have their origin in acts of violence committed by the Venezuelan Government and their officials.

Paragraph 2 simply gives an explanatory definition of the words in Paragraph I "for the purpose of paying the claims specified in article 3, as well as similar claims preferred by other powers," by expressly authorizing (in default of another agreement) the Permanent Tribunal of Arbitration at The Hague to determine the rights of Germany, Great Britain, and Italy to a separate payment of their claims and to decide how the customs revenues specified in paragraph 1 would have to be distributed.

It is therefore hard to understand how article 5 could ever be referred to by our opponents as showing that equal treatment for all creditor powers were consented to by the blockading powers.

On the contrary, paragraph 2 shows conclusively that the blockading powers insisted upon preferential treatment of their claims.

That there was no change in this attitude of Germany, Great Britain, and Italy between the 13th. of February, 1903, and the 7th of May, 1903, is, moreover, proven by the fact that article 1 of the agreement of May 7, 1903, provides for a decision of the question whether or not the three powers are entitled to preferential or separate treatment in the payment of their claims.

It can, therefore, apparently not be justly contended that at any time after the beginning of the peace negotiations between Germany, Great Britain, and Italy and Venezuela, the three powers, or any of them, should have renounced the right of preferential treatment constituted by the promise given to them by President Castro. This

fact has been, moreover, expressly acknowledged in the argument of the Government of the French Republic (page 5, paragraph 3) by the words "but on this point, and at the very beginning, an absolute difference arose."

4. Our opponents in their arguments contend again and again that "equity is equality." Argumentation on the ground of a formula like that is in practice easily misleading, and at any rate it has to be admitted that there is no room for the principle of equality where special agreements and acquired rights are entitled to precedence. Such, however, is the case with the demand of the blockading powers for preferential treatment, as sufficiently shown by us in our printed briefs. Our opponents, furthermore, argue that the argument "equality is equity" takes place especially in the case of a "concursum creditorum," claiming, at the same time, that Venezuela finds herself in such condition. Such a case is, however, not at issue. Venezuela is not bankrupt, nor has she made a general "cessio bonorum" to her creditors. She has simply ceded part of her customs revenues as security to those creditors. That does not, by any means, constitute a case of "cessio bonorum." That Venezuela is not bankrupt appears, too, from the protocols of February 13, 1903, with Germany and Great Britain, under whose provisions the principal claims of these two countries, originating in the loans of 1881 and 1896, respectively, are excluded from participation in the 30 per cent. If the argument that "equality is equity" were admissible those claims would have to be treated alike with the rest of the claims. Therefore the pledge given to the blockading powers by President Castro, that they should have satisfaction and adequate security for all their claims and that that security should be the customs of Venezuela, does not constitute a conflict with any rights of third parties.

The foregoing considerations to numbers 1 to 4 cover very nearly the entire ground on which our opponents base their objections to the demand of the blockading powers for preferential treatment or separate payment. We, therefore, instead of answering separately to the single briefs, beg leave to confine ourselves to refer, for a collective answer to them, to those considerations.

At the same time there are some special points in some of the briefs which seem to require a special answer and which, therefore, will have to be considered, in particular, in the following remarks.

#### THE UNITED STATES.

In his brief for the United States Mr. Penfield asserts "that the warlike operations of the allies did not benefit the United States." The same assertion is made in the brief on behalf of Spain and in the

argument of the Government of the French Republic. The latter argument, however, restricts its assertion by saying that "the service rendered the others by the blockading powers through their intervention will have been of little importance if the pacific powers have no right to the 30 per cent till after the entire satisfaction of the blockading powers" (page 22). France, therefore, admits that the service will be of importance, if only of little importance, if preferential treatment will be granted the blockading powers. Spain, for her part, seems to think that the intervention of the blockading powers did even harm her prospects to obtain, by diplomatic methods, satisfaction from Venezuela. Why she thinks so she does not say. All these assertions find, to our mind, no confirmation in the facts. It can not be denied that, for years, Venezuela persistently refused to satisfy her creditors or simply ignored her obligations or suspended payments on them. This attitude on the part of Venezuela gave rise to no end of diplomatic correspondence between her and every one of her creditors, such correspondence being, however, of no avail, and in the end led up to coercive measures by the blockading powers. It clearly was owing exclusively to this coercion that Venezuela, submitting to force, agreed to offer 30 per cent of the customs revenues of La Guaira and Puerto Cabello for the satisfaction of the claims of all her creditors, and in the agreements arrived at with her other creditors subsequently to the agreements concluded with the blockading powers, consented to place the administration of the custom-houses of the ports of La Guaira and Puerto Cabello under the control of Belgian officers if she should fail to comply with the terms of the agreements.

Can there be a reasonable doubt, we ask, especially in the face of her former attitude, that Venezuela would not have given her consent to such an arrangement unless forced to do so by the military operations of the blockading powers? And, moreover, can there be a reasonable doubt that the financial position of the creditor powers toward Venezuela has been considerably improved by such arrangement? If they had not thought so, why should they have been so anxious to adhere to the protocol of February 13, 1903? Even if preferential treatment should be granted, as we honestly believe it will have to be granted, the blockading powers, the other creditor powers will, without any effort on their part, have now a valuable guaranty that their claims will be satisfied within a given number of years, while formerly they had no security whatever, that they ever would be satisfied. This result is obviously entirely due to the blockade of the Venezuelan ports by Germany, Great Britain, and Italy. It is on account of this result that we contend that, in fairness and equity, we are entitled to preferential treatment.

## FRANCE.

The argument for the French Republic, on pages 13 and 22, admits that the blockading powers as "*negotiorum gestores*" for the other creditor powers would be entitled to "a privilege for their expenses." It is, however, argued that because Venezuela had not been asked to refund those expenses the claim had been lost. This argument is, however, not prejudicial to our claims. It is obvious that our demand for preferential treatment has in the first place its justification in law as at length expounded in our briefs. It is principally from such legal points that our rights to preferential treatment for our claims out of the 30 per cent are contended for. The contention for such right from the point of a "*negotiorum gestio*" is of an auxiliary nature. But even if the point of view preferred in the French brief were adopted such argumentation would not seem to be logical because the fact that Venezuela has not been asked to refund the costs of the blockade would not seem to exonerate the creditor powers from the obligation to do so if they want to share the 30 per cent with the blockading powers on the footing of equality. We, however, argue that because the other creditor powers did not offer to contribute their shares to those costs, they are already for this reason alone not entitled to ask for equality with the blockading powers, as to the distribution of the 30 per cent.

## SPAIN.

The agent of the Spanish Government on page 1 of his brief contends, quoting at the same time a number of authorities on international law, that

there exists a complete and natural equality among the States which constitute the international society of civilized peoples and that the rights of a third party can neither be altered nor curtailed by acts or agreements in which it has no part.

We cheerfully admit all that, contending at the same time that those principles do not in any way apply to the case at issue.

The blockading powers do not in the least contest the complete and natural equality among the States as States, nor did they ever pretend to have a right to curtail the rights of a third party. On the contrary they added to those rights and improved the status of the third party. But how about the reverse of the medal? Can a third party acquire rights by acts in which it had no part? It was owing to the military operations of the blockading powers that security was promised and her customs pledged to them by Venezuela for their claims. By what title do the other creditor powers demand admission to that right acquired by acts in which they had no part?

We honestly believe that the arguments put forth by our opponents for the purpose of showing that the blockading powers have no right



to demand preferential treatment for their claims out of the 30 per cent of the customs revenues of the ports of La Guaira and Porto Cabello are lost, and therefore repeat our respectful petition.

That it may please the court to decide in the affirmative the question whether or not Germany, Great Britain, and Italy are entitled to preferential treatment or separate payment for their claims against Venezuela.

### PART III.

Article 5, paragraph 1, of the German protocol of February 13, 1903, provides as follows:

For the purpose of paying the claims specified in article 3, as well as similar claims preferred by other powers, the Venezuelan Government shall remit to the representative of the Bank of England in Caracas, in monthly installments, beginning from March 1, 1903, 30 per cent of the customs revenues of La Guaira and Porto Cabello, which shall not be alienated to any other purpose. Should the Venezuelan Government fail to carry out this obligation, Belgian customs officials shall be placed in charge of the customs of the two ports and shall administer them until the liabilities of the Venezuelan Government in respect of the above-mentioned claims shall have been discharged.

Corresponding to this provision, article 1 of the agreement of May 7, 1903, stipulates in paragraph 3:

If preferential or separate treatment is not given to the blockading powers, the tribunal shall decide how the said revenues shall be distributed among all the creditor powers, and the parties hereto agree that the tribunal in that case shall consider in connection with the payment of the claims out of the 30 per cent any preference or pledges of revenue enjoyed by any of the creditor powers, and shall accordingly decide the question of distribution so that no power shall obtain preferential treatment, and its decision shall be final.

What do these provisions mean? They mean, to our understanding:

1. That only claims similar to those mentioned in article 5, paragraph 1, are entitled to satisfaction from the 30 per cent. The Belgian claim arising from the water supply debt therefore can not enjoy satisfaction out of the 30 per cent unless it has to be considered as being a "similar" claim to those mentioned in article 5. There is, however, no similarity whatever between the Belgian claim and the others, and, moreover, article 6 of the German and British protocols expressly excepts all Venezuelan loans from participation in the security of the 30 per cent. The admission to this security of the Belgian claim would therefore be prejudicial to the rights of all creditors to whom the 30 per cent have been hypothecated. Any decision of the mixed commission in favor of the admission of the Belgian claim arising from the water supply debt would therefore be invalid. Only this tribunal could admit that claim to the security of the 30 per cent if it could come to the conclusion that it had to be considered as a "similar" claim in the meaning of article 5.

2. That under the provisions of article 1, paragraph 3, of the arbi-



tration agreement of May 7, 1903, the Belgian claim has no chance whatever to be satisfied out of the 30 per cent, because under such provisions "any preference or pledges of revenue enjoyed by any of the creditor powers have to be considered in connection with the distribution of the 30 per cent." The "statement of facts" given by Belgium contains ample proof not only for the fact that preference and pledges of revenue have been given for her claim, but even that the revenues derived from the waterworks are entirely sufficient for its satisfaction as promised. If, as asserted in the Belgian case, the Government of Venezuela did not live up to her obligations toward Belgium arising from the deed of transfer of October 31, 1895, it is for Belgium to compel her to do so.

Belgium certainly has no right whatever to consider the preference and pledges of revenue given to the creditors of the water supply debt as canceled because Venezuela did not live up to her obligations and for this reason to demand satisfaction for those creditors out of the 30 per cent, nor would it change the legal aspect of the case if she would waive her right to the preference and the pledges of revenue flowing from the deed of transfer of October 31, 1903. There is only one legal basis on which she might demand admission to the 30 per cent. That basis is article 1, paragraph 3, of the agreement of May 7, 1903. This agreement, however, expressly excludes her claim from such satisfaction, and, for that reason, she can not be admitted to the 30 per cent to the prejudice of those creditors of Venezuela, who, on the ground of article 1, are entitled to satisfaction out of the funds flowing from those 30 per cent.

We therefore respectfully submit: That it may please the court to decide that the claim of the Caracas Water Supply Company is not entitled to satisfaction out of the 30 per cent of the customs revenues of La Guaira and Porto Cabello, which have been set apart by Venezuela for the satisfaction of her creditors, subject to the provisions of article 1, paragraph 3, of the agreement of May 7, 1903.

It is not now known to us whether there will be other claims of a similar nature preferred by any of the other creditor powers. The blockading powers, therefore, claim the right to have the particulars of such claims made known to them and to be given time and occasion to investigate the character of those claims and to put in their arguments against their admission to the 30 per cent, provided that the court should not think fit to reject those claims "a limine."

As to the question of the distribution of the cost of the proceedings before this court, article 5 of the agreement of May 7, 1903, provides that—

the tribunal shall, subject to the general provision laid down in article 57 of the international convention of July 29, 1899, decide how, when, and by whom the cost of the arbitration shall be paid.

From this provision it is clear that, contrary to what seems to be the opinion of France, there will be no refunding of costs for any party to the proceedings, and that each party will have to contribute on equal terms to the costs of the tribunal. We therefore respectfully further submit: That it may please the court to decide as to the costs of the arbitration proceedings as provided for in article 5 of the agreement of May 7, 1903.

#### PART IV.

Coming to review the arguments of our opponents in their counter cases, we begin with the most important of them, the counter case of France:

I. The attack on the assertion of the blockading powers that, at the time when, on February 13, 1903, the protocols were signed, they had been, so to say, in possession of the customs-houses of Venezuela, appears to be lost. In asserting that, while the Venezuelan men-of-war and her vessels of the mercantile marine had been seized by the blockading powers, the custom-houses had remained in the possession of the Venezuelan Government, the French counter case overlooks that the custom-houses were under the control of the cannons of the blockading men-of war, and therefore actually in the possession of the blockading powers. At the same time those custom-houses were deprived of any receipts, and therefore abandoned by the Venezuelan Government.

II. France takes exception to the claims preferred in the German case for preferential treatment by the following reasons:

1. She claims that the preliminary negotiations between Germany and Venezuela prior to the German protocol of February 13, 1903, could not come into consideration because those preliminary negotiations had not been referred to in the protocol. These assertions are apparently erroneous. Article 5, paragraph 2 of the protocol, stipulates that the dispute about the right of the blockading powers to preferential treatment should be referred to The Hague tribunal. This dispute, however, has not been defined in the protocol as to its bearings and, therefore, could, as to its particulars, not be explained without reference to the preliminary negotiations. It is from these preliminary negotiations, however, that the claims of the blockading powers appear to be justified.

2. As to the argument under I, 2 of our counter case, France further contends that the blockading powers were not entitled to preferential treatment on the ground of their action against Venezuela, because this action could not have furnished them a legal title to such preferential treatment, and because, by the protocols of February 13, 1903, such action had been deprived of any legal significance. At the same

time France asserts that the blockading powers had been sufficiently awarded by the satisfaction of their claims of the first rank.

According to the German brief the action of the blockading powers against Venezuela has effected a legal title to preferential treatment because such action lead to the hypothecation of the 30 per cent by which, naturally, the blockading powers, in the first place, were entitled to profit by. Furthermore, it has already been explained in the German counter case that the risk and the costs of the blockade have, to a great extent, exceeded the advantages derived from it. The expenses incurred by Germany by the blockade are considerably higher than the amount of the claims of the first rank, and, moreover, the only real advantage Germany has derived from the payment of her claims of the first rank in priority to the claims of the other creditor powers is confined to the interest of a few years on the amount of such claims.

3. As to our assertion, sub I, 3 of our counter case, that Venezuela would have been obliged to refund the costs of the blockade and that the blockading powers have only waived their corresponding right under the condition that satisfaction for their claims would be given them out of the 30 per cent, France, referring to the correspondence between Great Britain and Venezuela, argues that the blockading powers had unconditionally waived their right to have those costs refunded to them. This assertion is entirely erroneous. There is nowhere any reference to such renouncements. On the contrary, in the correspondence between Great Britain and Venezuela it is expressly stated that either preferential treatment had to be granted or the costs of the blockade to be refunded. The blockading powers have only not insisted on their right to have the costs of the blockade refunded because they felt sure that, on account of the preliminary negotiations between them and Venezuela, the arbitral tribunal would acknowledge the legality of their claims and, therefore, accord them satisfaction out of the 30 per cent.

4. France finally contends that the argument, sub I, in fine of our counter case, by which we claim that, if preferential treatment should be denied the blockading powers, the other creditor powers would, according to the principles of "*negotiorum gestio*," at least have to refund to the former part of the costs of the blockade, has been lost, because, avowedly, the blockading powers had waived their right to have those costs refunded to them. This argumentation does not appear admissible for the reason that the other creditor powers, not Venezuela, are to be considered the "*domini negotii*," because they, not Venezuela, claim admission to the advantage derived from the action of the blockading powers. Therefore, now, the other creditor powers, not Venezuela, would be obliged to refund the expenses incurred by the blockading powers. None of the other powers, except

France, has, so far, made any offer to refund part of those costs. Therefore the blockading powers have had, so far, no reason to exhibit a list of their expenses. If, however, the court should find that it would be relevant to produce such list, Germany is at any time prepared to furnish the court and the parties, without delay, with a statement of her expenses. It shall, however, be expressly stated that we do not make a formal request for a decision by the arbitral tribunal to the effect that the other creditor powers would have to refund part of the costs of the blockade. All we want is that, in any event, the demand of the other creditor powers for their participation on equal terms with the blockading powers in the 30 per cent should be made dependent on the offer on their part to refund the expenses of the blockade.

III. France has repeatedly urged that the blockading powers were not in a position to support their claims for preferential treatment by any precedent. As to that argument we simply have to say that precedents can not be adduced by us for the obvious reason that hardly in any case claims of the same nature have been preferred by any contesting parties as those which are preferred by our opponents.

#### BELGIUM.

The Belgian arguments are, on the whole, of the same character as the French, and, therefore, do in so far not call for special refutation.

We, therefore, may confine ourselves to the discussion of the objections made by Belgium to the legality of our demand for preferential treatment on the grounds of our action against Venezuela. Belgium asserts that the offer made by Venezuela to set aside 30 per cent of her customs revenues from the ports of La Guaira and Porto Cabello for the satisfaction of her creditors was not the result of the action of the blockading powers, because Venezuela would have done so without any coercive measures. Moreover, Belgium argues that even if the action of the blockading powers had led up to that result, those powers would, for that reason, neither have a right to demand that their expenses should be refunded nor an exclusive title to preferential treatment out of the 30 per cent, because they had no mandate from the other creditor powers and because, according to the principles of civil law, the hypothecation by Venezuela of the 30 per cent had to be shared in by all her other creditors. This argument is not conclusive. There is no proof for the assertion that Venezuela would, without coercive measures, have satisfied her creditors, especially her Belgian creditors, and that proof would naturally be incumbent upon Belgium. Besides a "*negotiorum gestio*" never requires or even admits a mandate. Belgium, therefore, can not contend that there was no "*negotiorum gestio*" by the blockading powers because they had no

mandate and, moreover, by claiming participation in the result of the action of the blockading powers Belgium, as well as all other creditor powers, must be considered as having satisfied the "*negotiorum gestio*." If it is admissible to refer to civil law for an analogy, the blockading powers certainly are entitled to preferential treatment, since in most countries, for instance in England, the United States of America, Germany, Austria, Hungary, Sweden, Norway, and Denmark hypothecation constitutes a title to preference for the creditor to whom the object is hypothecated.

#### NETHERLANDS AND SWEDEN-NORWAY.

This counter case contains the following views which call for special discussion:

I. This case refers to the treaty of Berlin of the 15th of July, 1878, because, according to its stipulations, not only the belligerents, but also neutral powers, namely, Austria-Hungary, Greece, and Montenegro, obtained advantages and even territorial acquisitions. This argument is not more to the point than the previous ones. The treaty of Berlin has settled afresh the political affairs of the Balkan Peninsula on the basis of treaty rights and with the adhesion of all the powers concerned, without encroaching upon the rights already acquired by the victorious party. In our case, on the contrary, the so-called pacific powers want to have their share of the advantages gained by the blockading powers in spite of the protest of the latter, and thereby to draw direct rights from a war to which they have been mere spectators.

II. The counter-case contends that the blockading powers could exclusively put forward considerations of law, but no considerations of equity, as in the treaty of May 7, 1903, the word "equity" was not mentioned, and as, according to Article XV of The Hague Convention, the judges had to decide only on the ground of respect for law. These deductions seem hardly justified. The basis of international law are law and equity, as the introduction of The Hague Convention explicitly states, that the principles of equity and of law were to be laid down in that treaty. Therefore there can be no objection whatever for the blockading powers to invoke principles of equity for their demand. But they have by no means limited themselves to principles of equity; on the contrary, it is rather the principles of law which have been put to the front.

III. It is further contended in the case of the Netherlands that the principles of equity could not be adduced for, but against, the blockading powers, as they had obtained through the peace protocols special advantages, injuring thereby the other creditor powers. It can hardly be said that there has been any injury of that sort, neither

direct nor indirect; the blockading powers have neither been encroaching upon any rights to which the pacific powers may have been entitled, nor have they prevented Venezuela from fulfilling its other obligations. If every treaty by which Venezuela undertook the engagement toward a single power of paying its debts was to be considered as injurious to the remaining creditor powers, the French-Venezuelan treaty of February 19, 1902, would be the first to suffer from that theory. According to this treaty recognized claims amounting to 2,500,000 and unrecognized ones amounting to 42,500,000 bolivars were to be paid by titles of a diplomatic debt; that means before any other claims.

IV. The case of the Netherlands finally attacks the contention of the blockading powers, that, in case of an equal distribution of the 30 per cent among all the creditor powers, they would not get sufficient satisfaction. It is said that all the claims which would have to be satisfied out of these 30 per cent amount to 50 millions, while, on the other hand, the revenues appropriated to that purpose amount to 5½ millions a year. It would, therefore, according to that estimation, take about ten years to satisfy all the claims, while, for instance, the settlement of the claims existing against China requires forty years. It is not known to us whether it will be possible to reduce the claims against Venezuela, which amounted to a total of 190 millions, to 50 millions. At any rate, it seems pretty certain, according to the facts, that Venezuela will hardly be able to raise more than about 4 million bolivars a year. With reference to the Chinese case, it must further be remembered that the Chinese claims have been paid in bonds of an interest-bearing loan, which can be realized at any time, while with Venezuela there is no prospect of an immediate realization; moreover no guaranty for interest is given for the intervening time until the claims will be paid.

#### SPAIN.

From the brief of Spain two arguments will have to be considered in particular:

I. Spain contends that the pledges which President Castro gave to the blockading powers with reference to the settlement of their claims contained, at the same time, the declaration that the other creditor powers were to be satisfied as well.

Therefrom it appears, according to the argument put forward by Spain, that the blockading powers were not entitled to preferential treatment. To this we have to reply that by the additional words above mentioned the promise given to the blockading powers evidently was not meant to be restricted. This would be the case if the security of the 30 per cent offered by Castro had to be distributed among all the creditor powers.



II. Spain says that the blockading powers could not put forward the principles of "*negotiorum gestio*," because their only intention had been to act in their own interest, but not for all the other creditor powers. In reply we may point out that not the blockading powers, but the other creditor powers themselves, are advocating the "*negotiorum gestio*," in so far as they want to participate in the results of the action by the blockading powers. This fact involves a distinct approval of the "*negotiorum gestio*" by the blockading powers, and, therefore, the obligation of the other powers to refund a part of the expenses incurred by the former.

I have arrived at the end of my arguments. It is in the principles of law, not so much in the principles of equity, that the blockading powers find their claim for preferential treatment well founded. Our juridical arguments have, in our opinion, not been shaken by our opponents.

Therefore we are entirely confident that the decision of this high court, which, by the mutual consensus of all the nations has been invested with the authority to uphold the principles of international law, will give us the right we claim, because we have shown that it is our right.

ARGUMENTS OF SIR ROBERT FINLAY, MR. ARTHUR COHEN,  
AND MR. H. ERLE RICHARDS ON BEHALF OF GREAT  
BRITAIN.

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MEETING OF NOVEMBER 5.

The ATTORNEY-GENERAL. Mr. President and gentlemen, I have the honor to appear for Great Britain, with my friends Mr. Cohen and Mr. Richards, and I shall lay before you, as shortly as may be, the observations which occur to me upon the case as it has been presented upon both sides.

A great deal has been said on behalf of the creditor powers who did not join in the blockade as to the strength and great resources of the blockading powers and the weakness of Venezuela, and although it was not expressed, it seemed to be implied in these observations that the weakness of Venezuela should have given her a certain immunity from the obligations of international law. I submit that no such doctrine can possibly find favor at the hands of this court. All nations are equal. The obligations of international law are for the weak as well as for the strong, and no doctrine can be imagined more likely to imperil the peace of the world than that, on account of its weakness, any nation should be supposed to enjoy immunity from the discharge of those international obligations which are incumbent upon all countries, whether they are powerful or whether they are weak. It is always a thankless and an ungrateful task for a great power to have to impose respect for international law upon a weak power. That task on this occasion fell to the lot of Great Britain, in alliance with Germany and with Italy; in the assertion of their own rights they were compelled to have recourse to coercive measures. Those coercive measures proved successful, and the question which is now submitted for the decision of this tribunal is whether the blockading powers are to be deprived virtually of the fruits of their exertions and whether those powers which took no part in those coercive measures are to be allowed to carry off the results which were achieved by the blockading powers. What has been done by the blockading powers was done for their own benefit, but it has also incidentally resulted in the provision of benefits for the subjects of the powers who took no part in the blockade.

A great deal has been said in the course of this discussion as to the blockading powers asking this tribunal for an award of merit.

Whatever merit there may be in the task of imposing the observation of international law upon a State like Venezuela does not accrue to the blockading powers. But it is not on the ground of any grace or favor that we appear before this tribunal to ask that we shall enjoy that preference which forms the subject of this arbitration. We say that we have it as a matter of right and of equity, not as a matter of grace or favor, and we ask at the hands of this tribunal that justice to which we say, under the circumstances of this case, the blockading powers are entitled. It would be dangerous in the interests of peace—interests which have been so often invoked in the addresses to which this tribunal has already listened—if it were held under such circumstances as the present that any powers, situated as the blockading powers are, lost the fruits of their exertions by referring the question in dispute to such a tribunal as this, instead of prosecuting their war-like operations to the bitter end. It is admitted on all hands, and can not be disputed, that if the blockading powers had exerted that force which they commanded, if they had insisted on there being assigned to themselves, and to themselves only, for the benefit of their subjects a portion of the revenues of Venezuela, it would have been quite impossible for any other powers to say that it was an act of injustice as between the blockading powers and the other powers who happened to be creditors of Venezuela. In making that admission my honorable opponents have only done that which really was incumbent upon them—for I apprehend that it is beyond all dispute that any security so acquired would have been in point of international law unimpeachable. Instead of prosecuting hostilities to the bitter end, and insisting upon that being given to them which they were entitled to, the blockading powers have consented to refer the question of their rights to this tribunal, and in the interest of that peace which has been so often invoked, and which never can be more appropriately invoked than before this tribunal, I do submit that it would be of most unhappy augury if the result of this case were to send forth to the nations the lesson that it is better to push things to extremity and to assert their own rights to the uttermost by the strong hand rather than to refer such a question as is here referred to the arbitrament of this august tribunal. It is the first time that a question of this nature has arisen for the decision of any court of arbitration. There are no precedents. It is for this court to apply the rules of justice and the rules of equity arising out of the facts. The researches of the representatives of the nonblockading powers have not been able to discover any precedent which can even be alleged to be in point except that of what took place in China some years ago. I advert to the case of China for the purpose of dismissing it, for I hope to be able in a very few sentences to satisfy the tribunal that the case of China has no bearing whatever upon the present case.

My friend Professor Woeste, in his address on behalf of Belgium yesterday, said that it was very easy to find out special differences of fact between one case and another, and to endeavor to get rid of any precedent on the ground that the circumstances were not quite identical. When the circumstances of the Chinese case are appreciated, it will be found that they are fundamentally different. In the present case there is a certain fund which forms the subject of adjudication. There are competing claims, and if all those claims are admitted, then the debts due to the subjects of the blockading powers are swallowed up in the multitude of claims which will absorb the greater part of the security, so that very little benefit may be derived by the subjects of the blockading powers. In the case of China nothing of the kind arose. There outrages had been committed upon the legations of many European powers, and certain of the European powers took the field in alliance with America and with Japan for the purpose of punishing those excesses and exacting retribution. The facts are stated very clearly in a document which is before the court. A statement by Mr. Tower, formerly secretary to His Majesty's legation at Peking, and from that statement it will be found that on the 22d December, 1900, there was a joint note sent in from the representatives of the powers at Peking to the Chinese plenipotentiaries specifying the demands of the powers. These demands included the punishment of certain Chinese officials; erection of expiatory monuments; prohibition of the importation of arms; and, under the sixth head, indemnity to governments, societies, individuals, and Chinese for losses incurred in consequence of their being in the service of foreigners, with other points which it is not necessary that I should now go into in detail. Now, it will be observed that the demands made were for compensation to the subjects of all the powers, not merely of the powers who had taken part in these military operations. That was the demand which was made in a joint note from the representatives of the powers at Peking, and the claims that were sent into China represented the aggregate of the claims of all the powers, whether they had taken part in the military operations or not. Under those circumstances surely it is clear that we had there to deal with a state of facts as widely different from the present as can be conceived. The belligerent powers in China represented the interests of all. All did not take part in the military operations, but all took part in the diplomatic representations. By the consent of all, belligerent and nonbelligerent, the claims that were sent in to the Chinese Government represented what was due to the subjects of all the powers, as well as to the Chinese under the circumstances which are mentioned in this memorandum.

Now, then, the claim having been so sent in, what was to be done

was this: The Chinese Government was required to pay the amount of that claim. We have not there to deal with a case in which a certain limited security has been achieved by the efforts of certain powers and a claim by other powers to come in and share in that security to the prejudice of the subjects of those powers by whose efforts it was attained. No question was ever raised as between the belligerent and the nonbelligerent powers in China, for the best of all reasons: that all were there in concert, and the belligerent powers acted in the interests of all, and the representations sent into the Chinese Government were on behalf of all the powers. I invite respectfully the attention of the court to this memorandum by Mr. Tower, who was fully cognizant of all the circumstances, and it verifies the statements which are made in the British counter case with regard to this Chinese claim at pages 44 and 58, and I have to submit to the tribunal that these passages and the statement of Mr. Tower have only to be read to show that the precedent of China is for present purposes no precedent at all. I have mentioned this case of China, about which so much has been heard, only for the purpose of dismissing it; and unless I am invited to do so by the tribunal, I shall not say another word about the case which, for any practical purpose, really has no feature in common whatever with that which is now presented for the decision of the court.

My friend M. Clunet, who yesterday addressed the court in a speech of great brilliance and eloquence, which I am sure was listened to with pleasure by everyone who heard it, and in respect of which I would desire, as representing the English bar, to add my tribute of admiration to the expressions of admiration and congratulation which he has already received, invoked the principles of private law for the purpose of deciding this dispute, and he laid down this proposition: that the property of a debtor is a security for all his creditors, and that it should not be monopolized for the benefit of any one creditor; that no part of it apparently should be applied for the benefit of any one creditor to the exclusion of the others.

Now, gentlemen, surely that proposition was far too widely stated. It is perfectly true that after a private individual becomes bankrupt, his property is distributed for the benefit of all his creditors alike, but it is not true to say that no one creditor by taking a pledge or by getting execution before others can acquire a priority. The proposition is so obvious that I shall not labor it. The books are full of cases in which one creditor has succeeded in obtaining a security either by way of hypothecation or by an execution which inures to his benefit in preference to all the other creditors, and if the proposition be laid down that as between the creditors there ought to be equality, I reply by saying that is only where all the creditors stand in the same position.

Now M. Clunet passed from his proposition of private law to a proposition of public law, and he disputed the right of the blockading powers to any preference, on the ground that any security they have was one which had been obtained by force. In one of those flights of fancy which adorned his speech he asked what would be thought of the conduct of a creditor who forcibly took possession of some very valuable watch belonging to his debtor and claimed that he had a preference upon it as against all the other creditors? As between individuals the reign of war, the reign of force, is at an end; but as between nations the right to make war and the right to enjoy the results of a successful war still exists. What analogy is there between the case put by my friend, M. Clunet, and the case of a power which has engaged in a successful war, and the question whether such a power is to be met by the proposition that, after all, what it has gained is the result of force? It has been said that strange things are sometimes done in the name of liberty. In the name of peace still stranger propositions have been uttered in this court, propositions to which, if this court gave the slightest confidence, I venture to say they would do a very great deal to undo that reign of peace which we hope to see prevailing in the world, thanks largely to the institution of this tribunal. It must be recognized as a fundamental proposition of international law that the results achieved by war are results to which the belligerent is entitled, and if the proposition is put forward that because force was employed to achieve these results, then what has been done is to be ripped up, I venture to say there would be such an unsettlement of rights as would entail the danger of wars, which at present are far removed from the range of probability.

Applying these general doctrines of private law which he had invoked, M. Clunet went on to say that what this court has to do with is two groups of nations, the one group remaining in the paths of peace and prosecuting negotiations with an improverished State, taking no steps to vindicate their rights by the strong hand; the other group consisting of three great powers who brought the whole of their resources to bear upon the enterprise of crushing such resistance as Venezuela could offer; and he asked, Are those great powers, because they had recourse to war, because they blockaded the ports of Venezuela, because they seized the Venezuelan navy, are they to be preferred to those powers who remained in the paths of peace? I submit, gentlemen, that the real question for your decision is this: When by the exertions of certain powers a security has been provided, is it or is it not equitable that the powers who realize that security should enjoy the preference in its distribution? It is said on the other side, "No; equality is equity." There is nothing in the world so dangerous as a catch word of that kind.



It has been repeated I know not how often. Equality is not equity, unless the circumstances are the same. Where there is a difference of circumstances, so far from there being equity, it indicates a total want of equity to treat all alike. And the proposition here is that those who took no part in the risks, in the expense, and in the trouble of the war, that those powers are to step in and share *pari passu* with the subjects of the powers who undertook all that risk, all that expense, all that trouble. As regards benefit, there is to be entire equality as regards the burden of these operations; there is to be entire inequality, and that is what my friend calls equity. There is a maxim which I may cite which is very apropos in the present connection, "*Qui sentit commodum sentire debet et onus.*" He who is to get benefit from any transaction must share the burden which that transaction entails. But the proposition which is contended for on behalf of the nonblockading powers is that, not having shared in the burden, not being now liable to share in the burden, repudiating all share in the burden, they are entitled to come in and share in the results. That they are to reap where they did not sow, and to enter into the enjoyment of what was done by the blockading powers. On behalf of Great Britain I very respectfully ask the tribunal to reject any such contention. The nonblockading powers will profit by what has been done by the blockading powers because this 30 per cent of the customs of La Guaira and Puerto Cabello which have been assigned will, after providing for the claims of the blockading powers, inure to the benefit of the nonblockading powers. The nonblockading powers will come in in their proper order. I submit that that is equity and that that is equality, and that what my friends are contending for is the grossest inequality, which in this case would work injustice.

I have dealt very generally with those propositions of jurisprudence which were particularly invoked by my distinguished friend who represents France in this discussion.

May I express my very cordial agreement with one thing that he has said, and that was this: That a discussion of principles of law is of very little use until you get your facts accurately.

When the facts are accurately ascertained the principles of law are generally found to be very easy of solution; and I desire, with the permission of the tribunal, at no great length to follow my friend M. Clunet in his review of the facts, for the purpose of supplying some very serious omissions in his statement, for the purpose of filling up the gaps which he left—gaps which, when they are filled up, will, I think, be found to show that any argument based on such considerations of jurisprudence as he evoked have no application to the present case.

But before I proceed to deal with those matters somewhat in detail, there are two points which I think I ought, with the permission of the tribunal, to deal with very shortly, as they have involved something like an attack upon the conduct of the British Government with reference to Venezuela. I refer to two points which were made in the speech of Mr. MacVeagh, who addressed the court some three weeks ago on behalf of Venezuela and of the United States. These two points relate to matters which have no direct connection with the present controversy, but to which Mr. MacVeagh devoted a good deal of attention. The first was the Venezuelan boundary arbitration; the second was the adventures of the vessel known as the *Ban Righ*, and the alleged claims of Venezuela against Great Britain in respect of that vessel.

I confess that it was with some astonishment that I read what Mr. MacVeagh said with regard to the Venezuelan boundary arbitration. He said that that arbitration had left in the mind of Venezuela "a rankling sense of injustice"—I think I quote the exact words used—and the grievance that he said existed was this: That Venezuela had not been allowed to name arbitrators of her own for the purpose of deciding that case.

Will it be believed, sir, that the treaty for that arbitration was a treaty concluded directly between Great Britain and Venezuela; that the treaty provided for the reference of the boundary dispute, which had been so long pending, to two arbitrations—two on behalf of Great Britain and two on behalf of Venezuela, with an umpire to be selected in a particular way?

The arbitrators on behalf of Venezuela in this treaty entered into by Venezuela were to be one nominated by the President of Venezuela, another selected by the Supreme Court of the United States. That was the free voice of Venezuela. The arbitration was entered upon, an award was arrived at, and now an advocate, who appears as an advocate for international arbitrations, who has the interests of peace more at heart than anything else, comes forward and tells this tribunal that that procedure has left behind in Venezuela a rankling sense of injustice. I really do not propose to comment further upon what was said upon this subject. I do submit that if anything could discourage those who have at heart the cause of international arbitration it would be that any state could be found to put forward its advocate to make such observations with regard to an arbitration which was conducted with every form, with every deliberation, conducted by those who were chosen by the two powers concerned to conduct it, and with a result on which it is not for me to comment, but with which I think there has been found no one bold enough to quarrel.

The other matter on which Mr. MacVeagh made very serious observations, as affecting the conduct of Great Britain, referred to a vessel called the *Ban Righ*. He told the court that Great Britain was in default with regard to the escape of the *Ban Righ* from British waters; that Great Britain had incurred a liability similar to that which formed the subject of the *Alabama* arbitration; and that Venezuela had a most legitimate ground of complaint against Great Britain in respect of what she had done or omitted to do in this respect.

Let me very shortly recall to the mind of the tribunal what took place with regard to that vessel. A communication reached the British Government that a vessel was being fitted out, apparently as a man-of-war, in the Thames. It was alleged that this vessel belonged to the Colombian Government; the consul stated that that was so. That statement was verified by Señor Ponthi, who represented Colombia in London, and the British Government were assured, on inquiry at Caracas, that no state of war existed between Venezuela and Colombia. Having received these assurances the release of the vessel was ordered. The vessel had been provisionally arrested, but, after being informed on authority by the official representative of Colombia that the vessel had been purchased by Colombia, and by the official representative of Venezuela that no war existed between Colombia and Venezuela, Lord Lansdowne had no alternative but to direct that that vessel should be allowed to go. There is no right, apart from the existence of a state of war, to detain the vessel of a friendly power which is in British waters. All those facts are set out in detail at pages 45 and 46 of the British Blue Book. I apprehend that it is too clear for argument that, in point of international law, there was no right to detain a vessel which had been purchased by a power which was not at war with Venezuela or any other country. I could cite authorities for that proposition, but it is so obvious that I think it unnecessary to do so, unless I am asked by the tribunal to supply the authority of judges or text writers for so obvious a proposition.

A most extraordinary contention has been put forward on behalf of Venezuela in this connection. In the Venezuelan case, at page 92, will be found this extraordinary passage. I have told the tribunal that, after being informed that this vessel had been purchased by Colombia, inquiries were made of the Venezuelan Government as to whether Venezuela and Colombia were at peace. Venezuela assured His Majesty's Government that they were at peace, and the vessel was let go. Now, if members of the tribunal will look at page 92 of the Venezuelan case, there will be found this sentence: "What if Venezuela, in her dire extremity, was compelled to say that she was at

peace with Colombia?" And the complaint is actually made by the representatives of Venezuela that Great Britain accepted as true the statement that Venezuela made! What extremity was there—what compulsion was there upon Venezuela to say that peace existed with Colombia if peace did not exist? Commentary would be wasted upon such a passage as that to which I have just directed attention.

The vessel left the Thames. She proceeded to Antwerp; she proceeded to Martinique. At Antwerp and at Martinique she was fitted out, and took on board a crew, which afterwards worked the vessel during the operations which are complained of. The English crew was dismissed at Martinique. The vessel was formally transferred to Colombia and the British register closed, and from that time onward there was no fitting out for warlike operations effected in any British port. The vessel undoubtedly did take part in hostilities of a very irregular nature against the Venezuelan Government, but what could the British Government do? It was a Colombian vessel; we had the authority of the Government of Colombia for that proposition. Was Great Britain to take what would have been a step of war against Colombia? If Colombia was improperly allowing the services of a Colombian vessel to be used in the interests of the Venezuelan insurgents, it was for Venezuela to take steps as against Colombia; and it is, I submit, beyond the possibility of dispute as a proposition of international law that I use the words of Mr. Justice Story in his judgment of the *Santissima Trinidad*:

The commission of a public ship, signed by the proper authorities, is complete proof of her national character; nor will the courts of a foreign country inquire into the means by which the title to the ship was acquired.

And, again, in the language of Chief Justice Marshall—which was admitted to be correct by the counsel in the American argument in the *Alabama* case:

The United States do not deny the force of the commission of a man-of-war issuing from a recognized power. On the contrary, they point with pardonable pride to the exhaustive judgment of Chief Justice Marshall on the subject as evidence of what they understand to be the law of nations; but they deny that the receipt of a commission from a nonrecognized power exempted Great Britain from liability growing out of the violation of her neutrality.

That is the recognized doctrine of the counsel for the United States in that case, citing the authority of Chief Justice Marshall for that well-established proposition. If Venezuela in this matter had any grievance, it was against Colombia. The vessel was flying the Colombian flag, and any steps taken by Great Britain to seize this vessel under such circumstances would have been steps of a hostile nature directed against the Colombian Government.

In the Venezuelan case, at page 83, will be found cited, at the bot-

tom of the page, a dispatch which would appear to bear a very unfavorable aspect from the British point of view :

Under date of the 27th March, 1902, the British minister replies: "Notwithstanding the notorious character of the ship in question, I am instructed by His Majesty's Government to inform that of Venezuela that, as it would seem that that ship is now, ostensibly at least, a Colombian man-of-war, and is flying the Colombian national flag, they can not properly direct any action against her."

Those words, "notorious character of the ship in question," do not occur in the dispatch at all. If the members of the tribunal will do me the favor of looking at the document itself, of which it is the first inclosure—inclosure No. 1—in No. 82 of the British Blue Book, at page 88, they will see this:

In my note of the 24th instant I had the honor of informing your excellency that I had lost no time in reporting to His Majesty's Government the protest of the Venezuelan Government against the presence at Port of Spain, without any objection on the part of the colonial authorities, of the insurgent steamboat *Ban Righ—Libertador*. I am now instructed by His Majesty's Government to inform that of Venezuela that, as it would seem that that ship is now, ostensibly at least, a Colombian man-of-war, and is flying the Colombian national flag, they can not properly direct any action against her. Any such action would be an act of war against Colombia, if she be a Colombian public vessel. I am further to state that His Majesty's Government incur no liability for, nor for any depredation committed by, the ship in question. The circumstances, moreover, under which she was allowed to leave England are of such a character that the Venezuelan Government can not properly put forward any charge of negligence. If, since her transfer at Martinique, she has made any use of the British flag, this has been simply a wrongful act, for which His Majesty's Government are in no way responsible. On the other hand, His Majesty's Government will not allow the ship to use a British port as a base of hostile operations against Venezuela; and the governor of Trinidad has therefore been instructed not to allow her to coal, and to request her to leave the port immediately.

Now, the members of the tribunal will observe that of that dispatch only one paragraph is cited, and that to that paragraph there are prefixed in this supposed extract, at the bottom of page 83 of the Venezuela case, words which do not occur in the document itself: "Notwithstanding the notorious character of the ship in question."

And this dispatch was cited in this erroneous form by Mr. MacVeagh in his address to the court. (I am referring to the transcript of the shorthand notes of Mr. MacVeagh's speech.) At the bottom of page 32 and the top of page 33 it will be found that he states that the British minister had replied on the 27th March in the terms which I have just read from the Venezuelan case, although if reference be made to the Venezuelan appendix, at pages 125 and 126, it will be found that the dispatch is copied correctly as it appears in the British Blue Book. There it stood in the Venezuelan appendix. In the Venezuelan case and in Mr. MacVeagh's speech it is quoted with these damaging words prefixed to the paragraph which I cited.



There is a dispatch of the 16th May, 1902, which is cited at page 84 of the Venezuelan case, but which occurs in its correct form in the Blue Book at page 103, No. 86. I will read first from the Venezuelan case, page 84, and secondly from the British Blue Book at page 103, No. 86. As cited in the Venezuelan case, it runs thus:

On the 16th May, 1902, the British minister at Caracas reports to Lord Lansdowne that the Government of Venezuela had made complaint that General Matos, the notorious insurrectionist [these words "the notorious insurrectionist" do not occur in the original, by the way] was making Trinidad the base of his attacks on Venezuela, directing, indeed, the revolution thence. \* \* \* I then wrote him not to put forward any request which it would be impossible to grant, such as that of the expulsion of General Matos. \* \* \* I pointed out that for more than half a century Trinidad had been the refuge of Venezuela of all parties, one after another. Had he ever heard of any being expelled? To-day it was General Matos; to-morrow it might be some of the other party.

Now, I submit to the tribunal that that citation gives a very inadequate idea of the dispatch itself, the material parts of which I read from the Blue Book at the bottom of page 103. It is a dispatch from Mr. Haggard to the Marquis of Lansdowne, in which he refers to Gen. Diego B. Ferrer having broached with him the subject of the relations between His Majesty's Government and that of Venezuela, and goes on thus:

I gave him the story of the *Ban Righ* at length. In reply to a rumor about the hostile attitude of the governor of Trinidad, I replied that I did not believe that there was any ground for such an idea; that it had been started and fostered by the Venezuelan consul in Trinidad, who, on the one hand, provoked the government there, and, on the other, excited and stirred up the Government here. I had another interview with him yesterday, when he reverted to the attitude of the government of Trinidad, and said that he was going to write to me on the subject, dwelling especially on the fact that General Matos was making Trinidad the base of his attacks on Venezuela, directing, indeed, the revolution thence. Would it not be possible to expel him? I said that I felt sure that every possible means had been employed to prevent the colony from being the base of attacks on Venezuela. I expressed my strong doubts as to its having been so, and showed him that it was this very determined attitude of His Majesty's Government to prevent this which had prompted their action in the case of the *Ban Righ*. I then urged him not to put forward any request which it would be impossible to grant, such as the expulsion of General Matos. I pointed out that the feeling with reference to the right of asylum in political cases was so deep rooted in England that it would be quite impossible for any colonial governor to act against it. I pointed out that for more than half a century Trinidad had been the refuge of Venezuelans of all parties one after another. Had he ever heard of any being expelled? To-day it was General Matos; to-morrow it might be some of the other party.

Now, I submit that when that dispatch is read it produces a very different effect from that which is produced by the perusal of the passage which alone is cited from this dispatch in the Venezuelan case. And may I say in passing that a very acute feeling has very naturally been evoked in Trinidad by some observations that were



made by Mr. MacVeagh with regard to what he said was the conduct of persons in Trinidad under the British Government with respect to Venezuela? I very respectfully submit to the tribunal that those observations ought not to have been made; that there is no evidence before the tribunal on the subject; that they are really irrelevant to the present inquiry, and are calculated to excite resentment on the part of those who are subjected to those observations; and all that I will say is this: That I do not desire to dwell upon such matters for this reason—that I submit to the tribunal that they ought never to have been introduced into the case.

The truth is, that the whole of this grievance of the *Ban Righ* and the matters connected with it, which is put forward time after time by the Venezuelan Government as a reason for not even discussing the British claims, is one of the most frivolous complaints that was ever made by any government, be it strong or be it weak, against another.

The British Government in the matter of the *Ban Righ* acted strictly in accordance with international law—it could not have acted otherwise—and yet, because this vessel under the Colombian flag was engaged, it is supposed, and it is believed, and with reason, in the interests of the Venezuelan insurgents, Great Britain was met time after time with a refusal on the part of Venezuela even to discuss her grievance, however temperately alleged, and is now made the butt for the oratory of Mr. MacVeagh.

Now I pass from those matters, which are really not properly relevant to the discussion which engages the tribunal, but with which it was essential that I should deal, as they involve something in the nature of an attack upon Great Britain for the purpose of inviting the attention of the tribunal to the history of these transactions and for the purpose of supplying some gaps which my friend M. Clunet left in his narrative; and I am going to submit that when that history is looked at by the light of the dispatches four propositions emerge. The first is this, that the circumstances were such that Great Britain was compelled to take the action she did. The second proposition is this, that before taking that action she communicated with certain of the other powers, nonblockading powers, informing them of what she proposed to do, and that they, with certain reservations which do not affect the matter now under discussion, stated that they could have no objection. The third proposition which, I submit emerges from the consideration of this history, is this, that Great Britain throughout, along with the other blockading powers, insisted upon adequate security being given in respect of the satisfaction of the claims now in question, certain claims were to be paid down; these were claims which involved matters of national honor, and not properly subject, it was thought, to arbitration, and they have been paid.

But as regards the claims now in discussion, it will be found that from the beginning and consistently Great Britain, along with the other blockading powers, insisted that either payment should be made or adequate security given for their liquidation. And the fourth proposition which I submit will be found to emerge from this history is this, that when it was stated by Mr. Bowen that he desired that the other powers also should have claims upon the security of the 30 per cent of the customs of these two ports, Great Britain refused to accede to that, and said that she could not accede to it unless this tribunal decided that she ought to. Great Britain insisted, as soon as that contention was put forward, that it should be left to the decision of this tribunal.

These are the propositions which I submit result from a perusal of the material documents when they are looked at in their entirety, without the omission of any relevant passages, and if those propositions are correctly stated, as resulting from this history, then I submit that the question really comes to be this: Is Great Britain to be a sufferer because, instead of prosecuting hostilities to the bitter end, she referred this question of priority to the tribunal?

Now, of course, it is necessary in the first instance to bear in mind what were the acts on the part of Venezuela of which Great Britain had reason to complain. A reference to the Blue Book will show that these acts date back to March, 1901. A great number of dispatches were written with regard to them with which I am not going to trouble the tribunal. From February, 1902, onward, the Venezuelan Government declined to discuss the British grievances because, as they said, they had this claim in respect of the *Ban Righ*, and until they were satisfied in respect of the *Ban Righ* they declined even to take into consideration the claims of Great Britain against Venezuela.

There are a great number of isolated acts of a high-handed character, which are set out in detail in the appendix to the British case, and they are, with one conspicuous exception, to which I invite the attention of the tribunal, dealt with in the Venezuelan case, and in the speech before this tribunal of Mr. MacVeagh. They consisted of seizures of vessels, maltreatment of British subjects, etc. I do not go into the details, to do so would be wearisome, and it is not upon the existence of any one particular case that this matter turns so much as upon the cumulative effect of a series of high-handed actions on the part of those representing Venezuela directed against British subjects and British property.

There is one case, however, of such exceptional gravity that I must call the attention of the tribunal to it, and more particularly for this reason, that while dealing at very great length with all the other cases, and putting forward various excuses and allegations in palliation of what the Venezuelans themselves did in these other cases, no attempt

whatever has been made to grapple with this case, either in the printed statement on behalf of Venezuela or in the speech of Mr. MacVeagh—that is, the seizure of the British vessel *Queen*.

Now, the facts with regard to the *Queen* will be found stated in the British counter case, at page 5; they were very shortly these: The British vessel, the *Queen*, was seized by a Venezuelan gunboat upon the high seas. The vessel was in ballast; she was seized upon the high seas and confiscated by the Venezuelan authorities under suspicion of having been engaged in the carriage of arms to the insurgents. Now, it is absolutely unnecessary that I should waste time in pointing out how utterly illegal such a procedure was. A vessel in ballast on the high seas was seized and confiscated on the suspicion that she had previously been engaged in the carriage of arms. No justification has been suggested, or can be suggested, for that act. It is passed over in silence by Mr. MacVeagh; it is passed over in silence in the Venezuelan case, although all the other British grievances are dealt with at very great length and in very great detail. And there is one most extraordinary omission in a document, which is No. 110 in the British Blue Book, at page 129—a dispatch dated the 29th July, from the Marquis of Lansdowne to Mr. Haggard, in which he says:

The following incidents have been the subjects of serious consideration by His Majesty's Government: The action of the gunboat *Augusto* in seizing and deporting certain British in January, 1901; the seizure of John Craig's boat and property on Patos Island in the February following; the similar interference on the same occasion in the case of the *Buena Fe*, which was accompanied by violation of territory; and the cases of the vessels *Maria Teresa*, *Pastor*, *Indiana*, and *In Time*. No satisfactory explanations have been received from the Venezuelan Government in any of these cases. The destruction of the British ship *Queen* is a still more flagrant instance of such interference. His Majesty's Government can not tolerate a continuance of the conduct which culminated in the last-mentioned incident, and you should address a formal protest respecting it to the Venezuelan Government. You should intimate to the President and the minister for foreign affairs, in unmistakable terms, that unless His Majesty's Government receive explicit assurances that incidents of this nature shall not recur, and unless the Venezuelan Government promptly pay to the injured parties full compensation, wherever satisfactory evidence has been furnished to His Majesty's Government that such is justly due, His Majesty's Government will take such steps as may be necessary to obtain the reparation which they are entitled to demand from the Venezuelan Government in these cases, as well as for any loss to British subjects caused by the unjustifiable conduct of the acting Venezuelan consul at Trinidad, and on account of the railway claims.

Now that document is cited in the Venezuelan case at pages 71 and 72, and in Mr. MacVeagh's speech at page 29, and I call attention of the tribunal to an extraordinary omission in the citation. At page 72 of the Venezuelan case occurs the passage beginning, "No satisfactory explanation has been received from the Venezuelan Govern-

ment in any of these cases;" then follows in the original dispatch this sentence, "The destruction of the British ship *Queen* is a still more flagrant instance of such interference," but that sentence is left out. There are asterisks there, but this case of the *Queen*, the incident in which culminated these acts of aggression by Venezuela, is not referred to. The sentence is left out, and one is led to suppose that the intervening matter is immaterial, by the insertion of asterisks, and then it goes on as before, "His Majesty's Government can not tolerate a continuance of the conduct which culminated in the last-mentioned incidents." Well, "incidents" is in the plural, so as to suit the omission of the sentence about the *Queen*. The allusion in the dispatch was to the incident of the seizure of the *Queen*, a high-handed act which no man could be found bold enough to stand up before this tribunal to justify, and that sentence is omitted when this is cited in the Venezuelan case, and the word "incident" in the singular is changed to "incidents" in the plural, so as to fit with the dispatch in its altered form.

MR. BOWEN. Will you excuse me one minute? I want to say that we did not state everything in the Venezuelan case, because we handed to the tribunal copies of the British Blue Book and of the Yellow Book of Venezuela, and therefore it was not necessary to put everything in the Venezuelan case. We allow the court to read them in the original, just as you have read them now, and the originals would correct any mistakes.

THE ATTORNEY-GENERAL. I quite accept what Mr. Bowen says. At the same time we all know the very great care that the tribunal brings to bear upon every question which is submitted to it; and I think it is a pity that so great a burden on the industry of the members of the tribunal was imposed upon them, as is involved in the necessity of verifying every dispatch that is cited to see whether anything material has been left out or not. It would have been better, I think, if the dispatch had been cited with this sentence relating to the *Queen* and with the word "incident" in the singular instead of in the plural. At the same time I quite agree with what Mr. Bowen has said, that on reference to the original it will be found that there was this omission in the dispatch as cited in the Venezuelan case and in Mr. MacVeagh's speech at page 29.

MR. BOWEN. I will just call your attention for a moment to the top of page 142; you will find the *Queen* is spoken of there and in the appendix in the preliminary examination on behalf of Venezuela.

THE ATTORNEY-GENERAL. In the appendix, certainly. I do not dispute that.

MR. BOWEN. We did not desire to hide the fact, and are very glad to have you bring it out, or any other point in your case that will help you in any way.

The president made some remark.

The ATTORNEY-GENERAL. Now, I have referred to this omission for the purpose of emphasizing the observation that I made, that it has been found impossible in the Venezuelan case or in Mr. MacVeagh's speech to attempt any justification for what was done with reference to the *Queen*. In both the speech and the case the subject of the *Queen* is passed over in silence. Indeed, it was wholly unjustifiable—no defense has been attempted and no defense could be attempted.

Now, those acts led, after a continued correspondence and a refusal of all satisfaction, to the three documents in the nature of demands for satisfaction to which I invite the particular attention of the tribunal. The first is the remonstrance of the 29th July, 1902; the second is the remonstrance of the 11th November, and the third is the ultimatum of the 2d December.

On the 29th July, 1902, Lord Lansdowne wrote the dispatch to Mr. Haggard, which is No. 110 in the British Blue Book at page 129, and which I have just cited in connection with what I have been saying, and shall not read again. In No. 122 of the British Blue Book, at pages 137 and 138, will be found a report made by Mr. Haggard of the effect of his dispatch to the Venezuelan Government. At page 138 occurs this sentence—it is the only one I think it necessary to read in the document, which is under the eyes of the tribunal:

I therefore begged him to consider, and specially to induce the President to consider, the note very earnestly, in view particularly of the serious consequences which might be expected to follow the refusal of the Venezuelan Government to comply with the just demands of His Majesty's Government. His Excellency accepted the note quietly; his final remark was that they were used to these communications. I said that that might be the case, but not from England; that his excellency must bear in mind that we had been extraordinarily patient; that His Majesty's Government were slow in taking such a weighty decision, but that they had the power to execute it when once taken.

The reply of Señor Baralt is set out on page 139. It is dated 30th July, the next day, and is inclosure in No. 1, 123. It is simply a refusal to consider the matter. There is only one sentence I will refer to, near the top of page 140:

The chief of the executive power is consequently surprised, both at your excellency's putting forward these facts and at the general tone of your note, and, in spite of all the questions which it raises, he does not consider it advisable to answer it immediately, owing to the fact that the Venezuelan Government decided to postpone dealing with matters of that and of an analogous character from the time when the *Ban Righ* committed her injurious act, and the Trinidad authorities showed such open partiality in a sense hostile to the peace of Venezuela.

That was the reception of the first of these very serious remonstrances.



On the 11th November the second communication was made. It is No. 164, inclosure 1, in the British Blue Book, at page 163:

I am instructed by His Majesty's Government to inform that of the Republic of Venezuela that they regret the unsatisfactory character of the reply to the representations contained in my note to your excellency of the 30th July last. They are unable to admit that the serious causes of complaint put forward can be met by a refusal to discuss them. If such a refusal is persisted in it will become the duty of His Majesty's Government to consider what steps they should take for the protection of British interests. They are, however, unwilling to exclude at once all possibility of proceeding with negotiations, and they are therefore ready to consider any further communication which the Government of the Republic may be prepared to make.

Señor Baralt replied on the 14th of the same month (inclosure 2 in No. 164), the next document. There again the effect of the communication, which I shall not weary the tribunal by reading, is really a refusal to discuss the grievances, similar to that with which we had already been met, and alleging the same reasons, with which I have dealt by anticipation.

Now that brings us to the 11th November, and I desire, at this point, to call the attention of the tribunal to the fact that before proceeding further His Majesty's Government took steps to inform other powers who might have claims against Venezuela of what they were doing. Communications were made by His Majesty's Government to the Government of the United States, to the Government of France, and to the Government of Belgium, and in every case it will be found that the answers, to which I am going to call attention in one moment, stated that these powers had no objection to the proposed measures so long as certain securities which they enjoyed were not interfered with. That was the only exception that was made in the case of France and of Belgium. The United States said that they had no objection to the proposed measures so long as no acquisition of territory in Venezuela was contemplated.

Now this matter is of so much importance that perhaps the tribunal will allow me just to refer to those documents, to show how Great Britain, one of the blockading powers, communicated at the very inception of those measures what she was about to do to other powers who might conceivably have some interest in the matter.

The communication to the United States was made on the 11th November, the same day on which that second remonstrance to which I have called attention was delivered. It will be found in the British Blue Book at No. 134, on page 145. After stating the nature of the British grievances, the Marquis of Lansdowne, in this dispatch to Sir Michael Herbert, goes on at the very bottom of the page—

the reply was wholly unsatisfactory, and practically ignored the remonstrances of His Majesty's Government. In view of the nature of this reply His Majesty's Government are compelled to consider what course it may be necessary to pur-



sue in order to enforce their demands. But before proceeding to ulterior measures they have decided to intimate their regret at the manner in which their representations have been received, and to state that the serious complaints put forward can not be disposed of by a refusal to discuss them. If such a refusal is persisted in, it will become their duty to consider what steps they should take for the protection of British interests. They are, however, unwilling to exclude at once all possibility of proceeding with negotiations, and are therefore ready to consider any further communications which the Venezuelan Government may be prepared to make.

The tribunal will observe that that dispatch began by asking Sir Michael Herbert to obtain an interview with Mr. Hay, the secretary for foreign affairs for the United States, in order to make a communication in the terms of that dispatch. The answer came on the 13th November, and is to be found at page 147, No. 138; it is dated only two days afterwards. It is a telegraphic dispatch from Sir Michael Herbert to Lord Lansdowne, in which he says this:

I communicated to Mr. Hay this morning the substance of your lordship's telegram of the 11th instant. His excellency stated in reply that the United States Government, although they regretted that European powers should use force against Central and South American countries, could not object to their taking steps to obtain redress for injuries suffered by their subjects, provided that no acquisition of territory was contemplated.

On the 28th of the same month a communication was received from M. Cambon, the French ambassador, with regard to these proposed measures, intimating what were the reserves of the French Government. This will be found in No. 158 of the British Blue Book, at page 158, and this document was referred to by my friend M. Clunet, but the two paragraphs which relate to the nature of the reservation, I think, require to be read. M. Clunet referred to the opening sentences of the dispatch and to the conclusion, but I do not think the effect of the conclusion can be appreciated without reading carefully the intervening sentences:

L'ambassadeur de France a fait connaître à son gouvernement les intentions que lui a manifestées, mercredi dernier, le 26 novembre, Lord Lansdowne relativement aux affaires du Vénézuéla. Le gouvernement britannique paraît disposé à recourir à une action navale; dans le cas où celle-ci devrait aboutir à une main-mise sur les douanes vénézuéliennes, le gouvernement de la République aurait des réserves à formuler; en effet, aux termes du traité franco-vénézuélien du 26 novembre 1885 (De Clerc, tome XV, supplément, p. 903). Article II: "La somme de 493,970.92 fr. à laquelle s'adjoindra ultérieurement le montant des indemnités allouées par la commission mixte instituée par la présente convention, sera couverte au moyen de la quote-part proportionnelle attribuée mensuellement à la France dans la repartition du 13 pour cent des quarantes unités douanières affectées par le Vénézuéla aux créances diplomatiques." Cette quote-part mensuelle ne pourra être inférieure au chiffre de——, etc. En outre, de nouvelles indemnités doivent être payées au gouvernement français au moyen de la même dette diplomatique, un arrangement signé à Paris le 19 février 1902. Il résulte de ces conventions qu'une main-mise sur les ressources de la douane vénézuélienne porterait préjudice

**aux intérêts Français.** L'ambassadeur de France signale cette situation à l'attention de sa seigneurie le Secrétaire d'Etat pour les Affaires étrangères.

Now it will be seen there that the reserve, and the only reserve, which France makes, is with reference to the security which French creditors had on these two particular funds which are mentioned in the body of the dispatch. That is the reserve, and the only reserve, which France makes. There is no general reservation apart from these two specific matters, and Lord Lansdowne, in No. 165 of the British Blue Book, at page 164, writes to M. Cambon accepting the justice of the French reservation:

I have given careful consideration to the memorandum which you were good enough to leave here on the 28th ultimo, calling attention to the treaty between France and Venezuela of 1885, and the protocol signed at Paris this year, by which a proportion of the Venezuelan maritime customs is assigned to the French creditors. In reply, I have the honor to inform your excellency that His Majesty's Government are fully aware of the nature of the French claims upon a portion of the revenue derived from the maritime customs of Venezuela. In any measures to which His Majesty's Government may resort for the purpose of enforcing their claims against the Venezuelan Government, care will be taken that French interests are not prejudiced.

There, again, Lord Lansdowne accepts the reservation with regard to these particular seizures, and informs M. Cambon that no prejudice will be done to French interests. And no prejudice is done. We do not in the slightest degree, in reference to our claim upon the 30 per cent of the proceeds of the customs of these two ports, seek in any way to interfere with the rights which French creditors had acquired under these two treaties which M. Cambon invokes. The diplomatic debt is accepted, and nothing that can be done in awarding preference to the blockading powers will have the slightest effect in impinging upon the security which the French creditors enjoy under those instruments referred to in that dispatch.

I may, in this connection, although it is a little out of date, refer to another communication which was made by France on the 18th December. I mention it here because it is more convenient sometimes to have these things in their logical connection than in merely chronological order. It is No. 201 of the Blue Book, at page 179. It is an intimation of the 18th December, 1902, some nine days after hostilities had begun by the seizure of the Venezuelan ships. It is a communication made by M. Cambon of a dispatch from M. Delcassé at the top of page 179:

**AFFAIRES DU VÉNÉZUÉLA.** Les gouvernements des États-Unis, d'Espagne, et de la Belgique ayant décidé de réclamer la clause de la nation la plus favorisée pour le règlement de toutes les demandes d'indemnités de leurs ressortissants, le

gouvernement de la République a cru devoir également assurer toutes garanties aux intérêts de ses nationaux. Le représentant français à Caracas a, en conséquence, été invité à réclamer pour une liquidation de nos réclamations fondées sur des faits postérieurs au 23 mai 1899, un mode de règlement et de paiement aussi favorable que celui obtenu par toute autre puissance. Quant à nos réclamations pour faits antérieurs au 23 mai 1899 (c'est-à-dire, l'élection du Président Castro), leur mode de règlement a été prévu par le traité de 1885 et le protocole de 1902; mais comme il y a lieu de veiller à ce que nos avantages sur ce point ne soient pas diminués, le représentant français a également reçu pour instruction, au cas où l'une des autres puissances créancières obtiendrait pour ses réclamations remontant à la même époque un mode de règlement plus avantageux, d'en réclamer aussitôt le bénéfice. Comme nous tenons en ces circonstances à tenir le gouvernement britannique au courant de nos résolutions, je vous prie de lui faire connaître verbalement le sens des instructions envoyées à notre agent.

That is an intimation that the French representative at Caracas had been instructed to inform the Government that France intended to claim as good treatment as was given to any other power; an intimation to the British Government that the French representative at Caracas was telling the Venezuelan Government that the Venezuelan Government were to give France as good terms as might be conceded to any other power. I submit that that intimation of the interests of France as between herself and Venezuela, has no bearing upon the present controversy, which is: What is to be done with the 30 per cent which, in consequence of the operations of the blockading powers, has been devoted to purposes over which this tribunal has to watch.

I have referred to those communications by Great Britain to the United States and to France, as to what her intentions with regard to Venezuela were, and the nature of the answer she received from these two powers. I pass to the intimation which was made a little later to Belgium. It would appear under date the 14th December in the same year, in the British Blue Book No. 189, at page 172, at the very bottom of the page. It is from M. Grenier to the Marquis of Lansdowne. It is dated from the Belgian legation in London, on the 14th December:

M. le MARQUIS: Les événements au Vénézuéla pouvant amener les forces britanniques à prendre possession des douanes de ce pays, mon gouvernement juge opportun de faire connaître au Gouvernement de Sa Majesté britannique que les intérêts belges, comme ceux de la France, sont garantis par les douanes vénézuéliennes. Je suis chargé en conséquence de faire valoir auprès de votre seigneurie le droit primordial sur une partie des revenus de ces douanes, qui appartiendrait à la Belgique dans cette éventualité.

There, again, it will be seen that the intimation was with reference to the prior right which Belgium held over a portion of the customs of Venezuela in case the measures taken by Great Britain against Venezuela should lead to the seizure of the Venezuelan customs. And

the reply to that is to be found at No. 205 of the British Blue Book, at page 181, from Lord Lansdowne:

I have the honor to acknowledge the receipt of your note of the 14th instant, calling attention to the fact that there are Belgian as well as French claims upon a portion of the revenue derived from the maritime customs of Venezuela. In reply, I have the honor to inform you that, in any measures to which His Majesty's Government may resort for the purpose of enforcing their claims against the Venezuelan Government, care will be taken that Belgian interests are not prejudiced.

There, again, I submit very confidently that it appears that the only reserve made is with reference to the charge which Belgian creditors had upon a portion of the debt.

Now, I submit that I have established that, with regard to these three powers, of the United States, France, and Belgium, that they were at once put into possession of what His Majesty's Government was about to do. They made certain reservations, but these reservations only relate to particular securities; they do not involve anything which is in the slightest degree material to the present question, and I may point out that, inasmuch as they expressed that thing, and that thing alone, with regard to which they desired to make reservations, they therein effect a renunciation of all reserve with regard to any other matters. So far as these three powers are concerned, the United States, as to the acquisition of territory, France as to the security in the customs, and Belgium with regard to a certain other security of customs, as long as those reservations were observed, and they have been observed and are now observed with regard to these three countries, Great Britain had a free hand to do what was right with regard to Venezuela. And I think I may say that the matter stands in almost the same position with regard to the other powers who were concerned, because the events which took place in Venezuela—the seizure on the 9th December, the blockade on the 29th December—were matters of public notoriety; they were known to every power in the world, and no protests were received by His Majesty's Government. I claim, therefore, to have established that in taking the steps which His Majesty's Government did take, that Government acted with the utmost consideration for the claims of all further powers and with their acquiescence.

Having regard to the remonstrance of the 29th July, to the remonstrance of the 11th November, and to the intimations which were sent around at the time to other powers of what it was intended to do, I pass to the third of the documents, which I commenced by saying were of importance—that is, the ultimatum of the 2d December. The terms of the instructions for that ultimatum appear in No. 161 of the Blue Book at page 160. It is not very long, but I shall not read

the whole of it because I am anxious to save time. I call attention to the paragraph in the middle of this dispatch. After referring to the claims, and the fact that they had been put off by references to the *Ban Righ*, Lord Lansdowne instructed Mr. Haggard thus:

You will request the Venezuelan Government to make a declaration that they recognize in principal the justice of these claims, that they will at once pay compensation in the shipping cases and in the cases where British subjects had been falsely imprisoned or maltreated, and that, as to the other claims, they will be prepared to accept the decisions of a mixed tribunal with regard to the amounts and the security for payment to be given. You should express a hope that the Venezuelan Government will comply with these demands, and not compel His Majesty's Government to take steps to obtain satisfaction.

Then he refers to the steps being taken by the German Government, and adds at the end:

You should make it quite clear that this communication must be regarded in the light of an ultimatum.

That was delivered, as appears from the document No. 217, in the same Blue Book at page 187, and the reply is dated the 9th December, at page 188 of the Blue Book, inclosure 4 in No. 217, and it is quite unnecessary to read this document. It refers again to the *Ban Righ*. It says that no steps have been taken to compensate the Venezuelan Government, and is simply a refusal even to consider the claims which were put forward.

Now, I appeal to the tribunal whether I have not, up to this point, established the first and second of the propositions that I said would emerge from this history. The first was that Great Britain was forced to take action by the various acts which had been committed by the Venezuelan officials. The second is before taking that action she communicated with the other powers, and that her action was taken with the acquiescence, I may even go further and say with the assent, of those other powers.

I now proceed with the narrative. The Venezuelan ships were seized, and President Castro ordered the arrest of all British and German subjects at Caracas, but they were released the next day, thanks to the friendly offices of the representative of the United States of America.

On the 13th December a request was forwarded by the chargé d'affaires of the United States of America as to arbitration as between His Majesty's Government and Venezuela. This document is No. 185 in the British Blue Book at page 171. No proposal had been made before by Venezuela for reference to arbitration. The British Government had offered that there should be a mixed commission to deal with the claims, and Venezuela had not responded, and had not herself proposed arbitration in any form with regard to the British claims. After the commencement of hostile operations on



the 13th December overtures were opened through Mr. White, the chargé d'affaires of the United States of America in London. That communication in effect was an offer to do that which Venezuela had refused when Germany offered it to her before; that is to say, to engage in arbitration. The document is No. 185, at the bottom of page 171 of the Blue Book. Mr. White writes to Lord Lansdowne on the 13th December:

The Government of Venezuela has requested the American minister at Caracas to communicate to the Governments of His British Majesty and of Germany a proposition to the effect that the present difficulty respecting the manner of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration, and I have the honor, in accordance with instructions from my Government, to communicate this proposal to your lordship. In view of the present condition of affairs in Venezuela I venture to hope that it may be possible for you to enable me to inform my Government at an early date of the decision arrived at by His Majesty's Government with regard to the proposal in question.

On the 18th of the same month Lord Lansdowne, in a document, which is No. 198 in the British Blue Book, at page 177, intimated to Mr. White that His Majesty's Government accepted in principle the proposal as to arbitration, except as to some of the claims which were of such a nature that they could not be included in the reference. I read one sentence from the dispatch which conveys this effect, the 18th December, 1902. This is the dispatch to Sir Michael Herbert: "I informed the United States chargé d'affaires that the cabinet had decided, at its last meeting over the seizure, to accept in principle the idea of settling the Venezuelan disputes by arbitration, and we have since ascertained that the view of the German Government was in accord with our own. We considered, however, that some of our claims were of such a kind that we could not include them in the reference. I said that I could not give him at that moment a precise description of the excluded claims, but that I should be able to do so shortly," and on the 23d December a formal reply was sent to this proposal for arbitration. It is No. 209 in the British Blue Book, page 183.

I shall not read the whole of the document; it is enough for me to call the particular attention of the tribunal to its terms. He says that the scope and intention of the proposal would require further explanation: "Apart, however, from this, some of the claims are of a kind which no government could agree to refer to arbitration. The claims for injuries to the person and property of British subjects, owing to the confiscation of British vessels, the plundering of their contents, and the maltreatment of their crews, as well as some claims for the ill usage and false imprisonment of British subjects, are of this description. The amount of these claims is comparatively insignificant, but the principle at stake is of the first importance, and His



Majesty's Government would not admit that there was any doubt as to the liability of the Venezuelan Government in respect of them. His Majesty's Government desire, moreover, to draw attention to the circumstances under which arbitration is proposed to them. The Venezuelan Government have, during the last six months, had ample opportunities for submitting such a proposal," and then he refers to the dispatches of the 29th July and the 11th November, and says:

His Majesty's Government have, moreover, already agreed that in the event of the Venezuelan Government making a declaration that they will recognize the principle of the justice of British claims, and that they would at once pay compensation in the shipping cases, and in the cases where British subjects had been falsely imprisoned or maltreated, His Majesty's Government will be ready, so far as the remaining claims are concerned, to accept the decision of a mixed commission, which will determine the amount to be paid and the security to be given for payment.

I call particular attention to those words. His Majesty's Government had intimated that they would be ready, "so far as the remaining claims are concerned, to accept the decision of a mixed tribunal which will determine the amount to be paid and the security to be given for payment."

I call attention to this passage as the first step in establishing what is the third of my propositions, that throughout His Majesty's Government insisted that they should have proper security for these other claims; "a corresponding intimation has been made by the German Government." And then follow the reservations, which are familiar to the tribunal, and which I pass over.

I go to the foot of page 183:

It would, in the opinion of both Governments, be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government, and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

There, again, security is insisted upon. Well, it is of no use having security if it is a security which is to be open to the competition of so many other claims that the claims of the blockading powers will be, so to speak, swamped, that the dividend payable will be so small each year that payment will be indefinitely postponed. When security is demanded it means proper security, and proper security is a security which provides for the payment of the claims within a reasonable time, and I very respectfully, very emphatically, invite the attention of the tribunal to the fact that, in this dispatch of the 23d December, in answer to the first overture made with regard to arbitration, His Majesty's Government say that they must have security. To provide security of 30 per cent on the customs of La Guaira and Puerto Cabello, which is to be open to the competition of the subjects of all

other powers is, while keeping the stipulation to the letter, not keeping it in a sense, because a security which is open to so many competitive claims that payment is indefinitely delayed is not a security such as is demanded by His Majesty's Government in that dispatch.

Now, there had interposed in the interval between the 13th December and that dispatch formally stating the intentions of His Majesty's Government, in answer to Mr. White's communication—there had intervened a proposal for direct settlement of these claims apart from arbitration, and it is proper that I should call attention to these proposals, because I think that from them will emerge further confirmation of this third proposition, which I venture to lay down as appearing from the consideration of the history of those claims. On the 18th December President Castro appears to have suggested that Mr. Bowen should negotiate for a direct settlement. In the Venezuelan appendix, at page 152, will be found a document under that date, the 18th December, from Mr. Bowen, the representative of the United States at Caracas, to Mr. Hay, the secretary for foreign affairs of the United States of America. It is in these terms:

Mr. Bowen has received the following official communication, that the Venezuelan Government confers on Mr. Herbert W. Bowen full powers to enter into negotiations to settle, in the most favorable manner possible to the interests of the Republic, the present difficulty which has arisen with the United Kingdom of Great Britain, the German Empire, and the Kingdom of Italy.

This was communicated to us by Mr. White, and on the 15th December, as appears by document No. 204, at page 180, of the British Blue Book, Lord Lansdowne says that his Government has accepted the proposal of the Venezuelan Government to refer to arbitration the matters in controversy.

In these circumstances, His Majesty's Government prefer not to abandon the proposals which they have already made, proposals which seem to them to afford every hope of a satisfactory settlement, in order to adopt the alternative procedure which the Venezuelan Government have apparently now suggested.

On the 20th December it appears, from the Venezuelan appendix, at page 153, that Mr. Bowen preferred a direct settlement; but the importance of this document in the present connection is the reference which it contains to the guaranty for payment, and I invite the particular attention of the tribunal to this document, which appears at the bottom of page 153 of the appendix to the Venezuelan case; it is a paraphrase of a telegram from Mr. Bowen to Mr. Hay, dated the 20th December, 1902, from Caracas:

Mr. Bowen states that arbitration at The Hague is objectionable, because very slow and expensive, and in the present case prejudicial to the interests of the Venezuelan Government, which wishes its war vessels returned at once, and the control of its rivers and ports, so as to prevent arms and ammunition from being imported by the revolutionists, who are so numerous that if they received a good supply of arms and ammunition will make the reestablishment

of peace more difficult. Mr. Bowen believes that Venezuela would be satisfied to pay a good sum in cash at once to the three powers, and would agree that a mixed commission should settle the amounts to be paid on claims, and that Venezuela would furnish ample security that payment of such amounts will be promptly made. Mr. Bowen states that, in the exercise of the full powers given to him, he may decide that, in the interests of Venezuela, it is better to accept at once and in full the claims of the three powers than to leave the matter to the tribunal at The Hague.

I do not know that I need read the rest of the dispatch unless it is desired. What I point out there is this: That Mr. Bowen, while proposing a direct settlement, says that Venezuela would be satisfied to pay a good sum in cash at once to the three powers, would agree to a mixed commission to settle the amounts, and that Venezuela would furnish ample security that payment of such amounts will be promptly made. Now, how is that consistent, I ask, with the attitude that is now taken up? A guaranty which is reasonable in amount, but not more than reasonable in amount, to satisfy within a proper time the claims of the subjects of the blockading powers, is offered, but with that offer as it now appears, is coupled the condition that not only the subjects of the blockading powers, but the subjects of all the nonblockading powers shall also come in. That is not following, in the words of this dispatch of Mr. Bowen's, "ample guaranty that payment of such amounts will be promptly made." The effect of the whole proposal that is now urged for acceptance by the tribunal would be this, that payment of the amounts would be very seriously delayed.

It is as clear as the day, I submit, that in this dispatch Mr. Bowen was dealing with the claims of the blockading powers, and stated in terms that ample security would be offered by Venezuela that the amounts of the claims of the blockading powers would be promptly paid. I respectfully press that point upon the attention of the tribunal, because I submit that it throws a flood of light upon the attempts that were subsequently made to dilute this security by letting in a flood of other applications, the result of which would be that the security would be very far indeed from furnishing an ample guaranty.

Now, I pass from those proposals for a direct settlement, which are really important only in so far as they clinch the point that Mr. Bowen was offering an ample guaranty for the payment of the claims of the blockading powers. I pass to the date of the 1st January, 1903, when was received the reply of President Castro to the memorandum of the 23d December—it will be found in No. 215 of the British Blue Book, at the top of page 186, under date of 1st January. It is a dispatch from the American embassy, signed by Mr. White, and addressed to Lord Lansdowne.

I have the honor, in accordance with instructions from my Government, to communicate to your lordship the following copy of a telegram which was received yesterday by Mr. Secretary Hay from Mr. Bowen, American minister to Venezuela: "I have received the following answer from the President of Venezuela." [Then follows the answer, etc.] "I recognize in principle the claims which the allied powers have presented to Venezuela. They would already have been settled if it had not been that the civil war required all the attention and all the resources of the Government. To-day the Government bows to superior force, and desires to send Mr. Bowen to Washington at once to confer there with the representatives of the powers that have claims against Venezuela, in order to arrange either an immediate settlement of all the claims or the preliminaries for a reference to the Tribunal of The Hague or to an American Republic, to be selected by the allied powers and by the Government of Venezuela. Mr. Bowen would be duly authorized to settle the whole question as the representative of Venezuela. Copies of the foregoing telegram from Mr. Bowen have also been transmitted by the Secretary of State to the American ambassadors at Berlin and Rome."

Now, the tribunal will observe the term used by President Castro:

I recognize in principle the claims which the allied powers have presented to Venezuela.

Lord Lansdowne thought, and very properly thought, that that required a little definition, and, accordingly, on the 5th January, he asked that there should be a more specific acceptance of the terms of the British Government—the document is No. 222 in the British Blue Book at page 191. It is a dispatch from Lord Lansdowne to Mr. White, dated the 5th January, 1903. I read near the bottom of page 191 of the British Blue Book:

His Majesty's Government observed with satisfaction President Castro's statement that he recognizes "in principle" the claims which they have put forward. His Majesty's Government understands this statement to signify that President Castro agrees on the part of the Venezuelan Government that any discussions in which Mr. Bowen, as the representative of that Government, is to engage at Washington with the representative of His Majesty's Government, are to proceed upon the assumption that the Venezuelan Government unreservedly accept and agree to be bound by the conditions laid down in the memorandum of the 23d December, 1902, which run as follows:

1. The claims (small as has already been pointed out in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews, and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration.

2. In cases where the claim is for injury or wrongful seizure of property, the questions which the arbitrators will have to decide will only be (a) whether the injury took place and whether the seizure was wrongful, and (b) if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

3. In the case of claims other than the above, we are ready to accept arbitration without any reserve. It would, in the opinion of both Governments, British and German, be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government, and the means to be

resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation. On receiving a definite assurance from President Castro that this interpretation of his language is accepted by him as correct, and that, whatever procedure be adopted, adequate provision will be made for the prompt satisfaction of the claims specified in paragraph 1, His Majesty's Government will be prepared to authorize His Majesty's ambassador at Washington to confer with Mr. Bowen as the representative of the Venezuelan Government, and will furnish Sir M. Herbert with the necessary instructions for examining the possibility of an immediate settlement, or failing such a settlement, for arranging a reference of all points left open for arbitration to the tribunal at The Hague.

On the 9th January the reply of President Castro is communicated. It is No. 228 in the British Blue Book, at page 194. It is again a dispatch from Mr. White to Lord Lansdowne:

I have the honor, in accordance with instructions from my Government, to communicate to your lordship a copy of a telegram which was received yesterday morning by Mr. Secretary Hay from Mr. Bowen, the American minister at Caracas:

"I have just received the following from President Castro: 'Mr. Minister, the Venezuelan Government accepts the conditions of Great Britain and Germany, and requests you to go immediately to Washington for the purpose of conferring there with the diplomatic representatives of Great Britain, Germany, and with the diplomatic representatives of the other nations that have claims against Venezuela, and to arrange either an immediate settlement of said claims, or the preliminaries for submitting them to arbitration.

" ' CIPRIANO CASTRO, *Constitutional President.* ' "

[Confidential.]

If, as I understand, Great Britain and Germany want to know what guaranty they will have, please inform them that it will be the custom-houses; consequently, I beg that the blockade be raised at once.

Now there is a statement by the President that Venezuela accepts the conditions of Great Britain and Germany. What were these conditions? They were the conditions which were stated in Lord Lansdowne's dispatch of the 5th January, which is at page 191, and to which I have just been referring, which specifically states what is to be done with the various heads of claims, and that the tribunal should not only determine the amount of compensation, but should also define the security to be given by the Venezuelan Government—an unqualified acceptance by President Castro in an addition to the telegram from Mr. Bowen himself, stating that if Great Britain and Germany want to know what guaranty they will have, "please inform them that it will be the custom-houses." That must mean that Mr. Bowen was communicating to Great Britain and Germany that they were to have the security of the custom-houses. In a sense, of course, the security of the custom-houses is now offered, but it is offered in such a shape that it becomes not a valid security. It is a



security which is to be open to all the nations, whether blockading or nonblockading. I submit, sir, that the effect of those communications was an intimation that security was to be given to the blockading powers, and that must mean adequate security, "security for prompt payment."

I pass on with this narrative, and we find that on the 13th January detailed instructions were sent to Sir M. Herbert by Lord Lansdowne, which are contained in document No. 234, at page 209, of the British Blue Book—and this again refers to the question of security—it refers to the anxiety that was felt for the raising of the Venezuelan blockade on account of the scarcity of provisions in Venezuela, which threatened general distress:

I told Mr. White that, much as we desired that the blockade should not be unnecessarily prolonged, I did not see how it was possible for us to raise it at this moment. I had not failed to take note of Mr. Bowen's statement contained in the note that Mr. White had handed to me on the 9th instant. It ran as follows:

"If, as I understand, Great Britain and Germany want to know what guaranty they will have, please inform them that it will be the custom-houses." This, no doubt, amounted to an intimation that the Venezuelan Government were prepared in one manner or another to hypothecate their customs revenue for the purpose of meeting their liabilities in respect of the compensation due to the powers. We could not, however, considering the past conduct of the Venezuelan Government, afford to remove the pressure which had apparently brought them to a tardy recognition of the obligations until we had something more specific than this to go upon.

Then it goes on to state what steps he desired should be taken, and at the top of page 209 says, "I could hold out no hopes that until a satisfactory undertaking had been arrived at the blockade would be raised," and in the next document, No. 234, page 209, Lord Lansdowne gives very detailed instructions to Sir M. Herbert.

I may pass over all the earlier part of that dispatch, and invite the attention of members of the tribunal to some passages which occur on page 211. At the top of that page he refers to the answer which had been given by the President of Venezuela on the 1st January: "I recognize in principle the claims which the allied powers have presented to Venezuela." Then, farther down, about the middle of the page, he refers to the reply which was transmitted on the 9th January in the form of a telegram from Mr. Bowen, which I have just read and I will not read it again. Then he goes on: "I have now to give your excellency the following instructions;" the instructions are detailed, but I may pass on to the summary of them, which is given at the bottom of page 212. It may be convenient that I should recapitulate briefly the instructions contained in the preceding paragraph.



1. If an arrangement is concluded for a direct settlement (a) claims arising out of the seizure and plundering of British vessels and the outrages on their crews, and the maltreatment and false imprisonment of British subjects, must be at once satisfied. (b) Other claims for compensation, including the railway claims, and those for injury to or wrongful seizure of property, must be met either by an immediate payment to His Majesty's Government, or by a guaranty adequate, in your opinion, to secure them. These claims can, if this be desired, be examined by a mixed commission before they are finally liquidated. (c) A fresh arrangement must be finally entered into by the Venezuelan Government in order to satisfy the claims of the bondholders.

Then,

2. If recourse is had to the tribunal at The Hague (a) immediate payment must be equally made of the claims in the first category. (b) The other claims, including those of the bondholders, will be referred to the tribunal on the conditions laid down in the memorandum of the 23d December.

Nothing can be more specific. I have read, not many minutes ago, the conditions in the memorandum of the 23d December, and Sir Michael Herbert is again told that, if there is to be a direct settlement, these claims of the second class must be met either by an immediate payment or by a guarantee adequate to secure them, and that if reference is made to the tribunal at The Hague this second class of claim is to be referred on the conditions in the memorandum of the 23d December, which the tribunal will recollect comprises conditions as to security being given for the payment of these claims.

On the 15th January Lord Lansdowne declined to take part in the general discussion with the other creditor powers, and stated that the blockading powers stood upon an entirely different footing. That appears from a dispatch of that date, the 15th January, No. 236 in the British Blue Book, at page 215—a dispatch to Sir Frank Lascelles, dated from the foreign office of the 15th January:

I had some conversation yesterday with the German ambassador in regard to the action which might be taken by the British and German Governments in consequence of the communication made to us on the 9th instant by the Government of the United States as to Venezuelan affairs. His excellency asked me whether His Majesty's Government had sent any reply to the communication in question,

and so on. Then, on page 216, just at the middle of the page,

His excellency called my attention to the fact that President Castro's letter apparently contemplated that Mr. Bowen should confer not only with the representatives of Great Britain and Germany, but with those of all other nations having claims against Venezuela. His excellency regarded this intimation with some alarm. I said that it seemed to me that the blockading powers stood on an entirely different footing from the rest, and that, in my view, it would be impossible for us to allow our representatives to take part in a general discussion at which a number of other powers would also be represented.

On the 16th January, in the dispatch No. 237, the next in the British Blue Book, at the bottom of page 216, Lord Lansdowne told Sir Michael Herbert:

His Majesty's Government are not prepared to join in a general discussion with other powers as to the questions at issue with Venezuela, and your excellency must make it clear to Mr. Bowen that you are authorized to discuss with him only the British claims and the proposals which he may offer for their liquidation.

And in this connection I ought to refer to a document which appears in the Venezuelan appendix, pages 159 and 160, which shows the view that Mr. Bowen took on the matter of security at this time. It is a paraphrase of a telegram from Mr. Bowen to Mr. Hay, dated the 6th January, 1903:

Mr. Bowen states that the attitude of the authorities in Caracas, both toward foreigners and the blockaders, has been exemplary since the 10th day of last December, when all the British and German subjects resident in Venezuela who had been arrested were set free. He reports that President Castro has done all in his power to come to a fair agreement with the allied powers—that he has been ready and anxious to settle his controversy with them,

and so on. Then, over the page (p. 160):

President Castro thinks it strange that, as he is willing to pay what he owes, and to offer a good guaranty that he will satisfy his creditors, he should not be allowed to come to an agreement, but is forced to carry the controversy before the tribunal at The Hague. President Castro has the greatest respect for that tribunal, but does not see why he should be forced to submit a controversy to it which could be settled at Washington quickly, easily, and at little expense. A proposition to settle in civil cases being always in order before the court renders its judgment, President Castro thinks that, as this is essentially a civil case, the allied powers should, at least, give his representative a courteous hearing, but if they are indisposed to do so and insist on The Hague, he feels that they ought to raise their blockade the moment he binds himself to abide by the decision of that tribunal. As he represents a weak nation and can not enforce his views, he trusts to the Government at Washington to use its good offices to secure just treatment for him.

I refer to that dispatch for this reason, that Mr. Bowen is there treating of the dealings of Venezuela with the allied powers, and when he says, on page 160, that President Castro is willing to pay what he owes, and to offer a good guaranty that will satisfy his creditors, I submit that the manifest meaning of those words is a good guaranty that he will satisfy his creditors—the allied powers, the blockading powers. That must be the meaning, as I submit very respectfully to the tribunal, of those words; and that shows the view which at that date Mr. Bowen took of that very important subject.

On the 20th January Mr. Bowen reached Washington. He came from Caracas to Washington, and on that date he at once requested that the blockade should be raised. For convenience I give the refer-

ence. It is No. 238 in the British Blue Book, at page 217. It is a dispatch from Sir Michael Herbert to Lord Lansdowne, dated 21st January:

I received a visit to-day from Mr. Bowen, who formally requested that the blockade should be raised before the commencement of negotiations.

On the 21st January Lord Lansdowne telegraphed to Sir Michael Herbert, No. 239 in the British Blue Book, on the same page:

With regard to your excellency's telegram of to-day, you will see from your instructions that the fulfillment of certain conditions is required before His Majesty's Government will consent to the blockade being raised.

These instructions must be the detailed instructions contained in the dispatch of the 13th January, at page 209 of the British Blue Book, to which I have already called the attention of the tribunal in some detail.

On the 23d January Sir Michael Herbert communicated to Mr. Bowen the terms on which the blockade would be raised. It will be found in the Venezuelan appendix, at page 163. He refers to the fact of the request for the raising of the blockade, and states that he has received a telegram from Lord Lansdowne setting forth the conditions which must be accepted by the Venezuelan Government before his lordship can comply with your request. They are as follows: "(1) The claim (small, impecuniary amount) arising out of the seizure and plunder of British vessels and outrages on their crews, and the maltreatment and false imprisonment of British subjects, must be satisfied at once. (2) The other claims for compensation, including railway claims and those for injury or wrongful seizure of property, must be met by an immediate payment to His Majesty's Government, or by a guaranty adequate to secure them." [Immediate payment or a guaranty.] "These claims can be, if desired, examined by a mixed commission." And then there is to be an arrangement with regard to the bondholders.

On the same date Mr. Bowen accepts these terms. That will be found in this same book, the appendix to the Venezuelan case in the next document, on page 164:

DEAR SIR MICHAEL: In answer to your letter of to-day, stating the condition on which Great Britain will raise the blockade of the Venezuelan ports, I have the honor to inform you that I accept those conditions, as they are substantially the same as those already accepted by the Venezuelan Government.

There you have the unqualified acceptance on that date by Mr. Bowen of the conditions of His Majesty's Government for the raising of the blockade, one of those conditions being that the claim of the second class "must be met by an immediate payment to His Majesty's Government, or by a guaranty adequate to secure them."

An unqualified acceptance of that condition—payment or adequate guaranty.

I ask the tribunal whether the security which it is now proposed to offer, with the admission of all the other powers, can be described by anyone as an adequate security for the claims of the blockading powers?

Dated the same day, there is another document, which also proceeds from Mr. Bowen, which will be found at page 163 of the Venezuelan appendix. It seems to have been a statement left in the hands of Sir Michael Herbert, and it is in these terms:

Mr. Bowen proposes that all claims against Venezuela shall be paid out of the customs receipts of the two ports of La Guaira and Puerto Cabello, the percentage to be 30 per cent each month of the receipts. In the case of failure on the part of Venezuela to pay 30 per cent, the creditor nations will be authorized to put, with the consent and without any opposition on the part of Venezuela, Belgian customs officials in charge of the said two custom-houses, and to administer them until the entire foreign debt is paid.

Both of these documents of the 23d of January are reported to Lord Lansdowne by Sir Michael Herbert in the document No. 240 of the British Blue Book, at page 217. I need not read it. It began by saying that Mr. Bowen accepts, without reservation, the conditions laid down by His Majesty's Government, and then goes on to deal with the 30 per cent for the creditor nations. Lord Lansdowne telegraphed back, in a dispatch which immediately follows, saying that the proposals appeared to be satisfactory in principle, and will serve as the basis for discussion, and so on.

Without fuller explanations occur (this is at the top of page 218) as to the financial arrangements which are proposed, it is impossible to realize their effect, and as regards certain points we should require definite information.

Now the fourth point is this:

Is it proposed that the 30 per cent should be paid by monthly installments to the blockading powers only, or are the whole of the creditor powers also to share the benefit?

The tribunal will observe the very peculiar state of affairs.

On the 23d January Mr. Bowen writes a note accepting unconditionally the conditions imposed by His Majesty's Government, one of which was either payment or adequate security. On the same day he leaves a memorandum with Sir Michael Herbert in the terms I have just read as taken from the document on page 163 of the Venezuelan case. Now, the contents of that document, as communicated, arrested Lord Lansdowne's attention, and he asks the question: "Is it intended that the 30 per cent is to go to the blockading powers, or to go to all the powers?" In the contemporaneous document of the 23d January Mr. Bowen had unconditionally accepted the terms of His Majesty's Government, one of which was payment or adequate security; but in

the statement left on that same date the terms are ambiguous, they seem to comprise all the creditor powers, and accordingly Lord Lansdowne writes to ask what is intended. That is in the document I have just been calling attention to; and in document No. 244, dated the 25th January, at the top of page 219 of the British Blue Book, his question is answered in a telegraphic dispatch from Sir Michael Herbert. Under head (4) Sir Michael says this:

Each of the creditor powers is to receive a share of the 30 per cent, 29,000,000 bolivars approximately, as the amount of the total claims of the other powers who are not engaged in the blockade. As to our claims of the first line, Mr. Bowen agrees that they shall be satisfied. I am to receive from him for this purpose a promissory note for £5,500, payable within thirty days.

In No. 245, the next dispatch, dated the next day, the 26th January, 1903, Lord Lansdowne points out to Sir Michael Herbert the questions that arose as to this security:

If only £213,000 a year is available [that is the sum it was estimated that the 30 per cent of these customs of these two ports would produce—as a matter of fact, I believe, the sum yielded by them is a good deal less, but Lord Lansdowne was dealing with the figures given to him]—it is obvious that many years will elapse before the whole of the above liabilities are extinguished. Under these circumstances the interest of the creditors would be far from assured, considering the insecurity of affairs in Venezuela. We consider that the claims of the powers engaged in the blockade should not rank on the same lines with other claims for compensation or with the bondholders, and that some special arrangement should be made with regard to the former. A portion of the revenue of the two ports might possibly be set apart under an arrangement by which the extinction of British, German, and Italian claims within, say, five years, would be provided for. It is presumed that this could be arranged without the other creditor powers, whose interests we have undertaken to respect, being injuriously affected.

That is to say, that this arrangement was not to affect the charge which French creditors and Belgian creditors had on certain proportions of the customs of Venezuela under this arrangement, which were specifically mentioned in the dispatches written by the ministers of these two powers when the British Government informed them of their intention to take proceedings against Venezuela; and on the 27th January Mr. Bowen definitely puts forward a statement that all the creditors were to share alike. It is in the Venezuelan appendix, page 167, at the bottom of the page. It is a dispatch from Mr. Bowen to Sir Michael Herbert:

DEAR SIR MICHAEL: Please do not fall to state in your cablegram that I can not consent to give preferential treatment to the allied powers, because, if the matter were referred to The Hague all the creditor nations would be put on the same footing. The allied powers, therefore, should not try to press the point, as it would be unfair to do so.

Mr. Bowen seems there to indicate that, in his view, as a matter of law, a preference should not be given to the blockading powers, and

gives as his reason for refusing that if the matter were referred to The Hague, all the creditor nations would be put on the same footing; and in another document, a memorandum two days later, which appears on the following page, page 168 of the Venezuelan appendix, his objections are somewhat elaborated, and elaborated in a form to which I ought to call the attention of the tribunal:

I object to paying first the claims of the allies and the claims of the other nations afterwards, because (1) I think it unjust and unfair and illegal to tie the hands of the said other nations for the period of five or six years that it would take to pay the claims of the allies; (2) if I recognize that brute force alone can be respected in the collection of claims, I should encourage the said other nations to use force also; (3) if the allied powers wanted preferential treatment, they should have asked for it in the beginning, and should not now propose it, after I understood clearly that all the conditions of the allied powers had been stated. If, however, this demand for preferential treatment is raised simply as a point of honor, I am willing to agree that the entire 30 per cent be paid to the allied powers for the first month.

Now I submit to the tribunal that this memorandum, with the document which immediately precedes it, dated three days before, mark an entirely new departure. Up to this point Great Britain and the other blockading powers had been insisting on security, adequate security. Payment or adequate security of this second class of claims and those conditions were unreservedly accepted.

Now the position taken up is that the 30 per cent which is to be assigned is not to be the security for the blockading powers, for which it would be adequate, although not more than adequate, if it were to be discharged within any reasonable time, but is to be the security for everybody, for all the powers who have claims against Venezuela are to take part in it.

MR. BOWEN. Will you permit me to say a word? The trouble is that you did not read to the court the document on page 162, which is the only document that was seen by the representatives of the blockading powers. You read to the tribunal the document on page 152. That document was never seen. You have read the wrong document, which was never seen by the representatives of the blockading powers.

THE ATTORNEY-GENERAL. I think my friend Mr. Bowen is mistaken about that.

MR. BOWEN. Never. I had both documents in my possession, and I took one, the one on page 162, and showed it to all the parties. The other I kept in my trunk, and I never showed it to anyone, and I think it is very important to have that fact known, because it shows that in the very beginning everyone understood that I had come to treat with all the powers and not with the blockading powers alone.



The ATTORNEY-GENERAL. I think Mr. Bowen will find that he is in error as to that document not having been communicated.

Mr. BOWEN. No; it was never shown.

The ATTORNEY-GENERAL. If Mr. Bowen would look at the document No. 20 in the appendix to the British case, Nos. 203 and 204 in the British Blue Book, page 180, he will see—

*Mr. White to the Marquis of Lansdowne, received the 19th December.*

MY LORD: I have the honor to inform your lordship that Mr. Bowen, the American minister to Venezuela, has informed my Government by telegraph that the Venezuelan Government has conferred upon him full powers to enter into negotiations on the part of Venezuela to settle the present difficulties with Great Britain, Germany, and Italy. I am instructed by Mr. Secretary Hay to communicate the Venezuelan proposition to your lordship, and to ascertain whether His Majesty's Government would be disposed to assent thereto.

That is the document of the 18th.

Mr. BOWEN. I stated that that document had never been shown—that is what I said. The one that was exhibited was the other one which you failed to read, and that was the second one.

The ATTORNEY-GENERAL. I will deal with the second document presently.

Mr. BOWEN. The first one never came before the negotiators in Washington, never; it was only the second one. It is very important that that fact should be stated.

The ATTORNEY-GENERAL. I will deal with the second document presently. Mr. Bowen, I understand, has the advantage of being able to give evidence with regard to these matters, of which of course he has more knowledge, "*quorum pars magna fuit.*" I can only argue upon the documents. As I understand, his point with regard to the first document is that the document itself was never shown—that it was only a copy of the document that was shown.

Mr. BOWEN. No; never a copy.

The ATTORNEY-GENERAL. I accept with implicit assurance, I need not say, whatever my friend Mr. Bowen says, and I thoroughly believe that the document itself remained safely in his custody; but what was communicated was the contents of the document, and that is ample justification for what I said with regard to it.

Now, with regard to the second document on page 162, if Mr. Bowen will be good enough to state what the point with regard to that second document is, I will endeavor to deal with it as I did with the other.

Mr. BOWEN. It was that I appeared there with these powers which stated that "the Venezuelan Government grants full powers to Mr. Herbert W. Bowen to effect at Washington, with the diplomatic representatives of the nations that have claims against Venezuela, the immediate settlement of them or the preliminaries for the sub-

mission to arbitration of such of them as can not be settled immediately." That was the official document I presented to all, and no other document. Therefore, you had notice at once that I came there to treat with all the powers. It was generally understood, and stated in the public print, and everybody knew it.

The ATTORNEY-GENERAL. I am afraid I can not compete with my friend Mr. Bowen as to a knowledge of what appeared in the public press with regard to this matter, of which, of course, he knows a good deal; but I do not think that what Mr. Bowen has said really adds anything material to what I was laying before the tribunal. I have already read to the tribunal the document in which it is stated in a telegram from President Castro that Mr. Bowen had authority to arrange with all the creditor powers. That adds nothing to the point now under discussion. The point is this—and I do not think it is a point that can be avoided—that up to the date at which we have arrived on the question of security, the blockading powers had been insisting on either payment or adequate security, and Mr. Bowen wrote, "I accept that." That was Mr. Bowen's dispatch. Up to that time the question had never been mooted of the other creditor powers. The one material question for the blockading powers was this: Are we or are we not to have adequate security for the discharge of our claims. Over and over again they stated that in the most explicit terms, and in that note which I have read Mr. Bowen said, "I accept those terms." Then arises this question in which we are now engaged.

[Adjourned to to-morrow at half past 10 o'clock.]

#### MEETING OF NOVEMBER 6, 1903.

The ATTORNEY-GENERAL. Mr. President and Gentlemen: Just before the adjournment yesterday, I had mentioned, in answer to an interposition by Mr. Bowen, that the document to which he referred on page 162 of the appendix to the Venezuelan case had, in fact, been read by me as embodied in the document of the 7th January, which immediately precedes it in that appendix. The tribunal will observe that the document at the bottom of page 161 of the Venezuelan appendix embodies the effect of that document containing Mr. Bowen's full powers, and that preceding document I read in the slightly different form in which it appears in the British Blue Book No. 228 at the bottom of page 194. The tribunal and Mr. Bowen will recollect that I read this document, and it will be found that it, in fact, embodies the terms of the powers conferred upon Mr. Bowen by the document which is set out on page 162. I have recurred to this matter merely for the purpose of removing from the mind of Mr. Bowen any impression that I had not done justice to his case upon this point.

I was about, when the adjournment took place, to comment upon the reasons given by Mr. Bowen against preferential treatment as they appear in the document at page 168 of the appendix to the Venezuelan case. The tribunal will recollect that that document is dated the 30th January, 1903, and that it gives three reasons against preferential treatment. On these three reasons I desire to make a very few observations. He says:

I object to paying first the claims of the allies and the claims of the other nations afterwards, because (1) I think it unjust and unfair and illegal to tie the hands of the said other nations for the period of five or six years that it would take to pay the claim of the allies; (2) if I recognize that brute force alone can be respected in the collection of claims, I should encourage the said other nations to use force also; (3) if the allied powers wanted preferential treatment, they should have asked for it in the beginning, and should not now propose it, after I understood clearly that all the conditions of the allied powers had been stated. If, however, this demand for preferential treatment is raised simply as a point of honor, I am willing to agree that the entire 30 per cent be paid to the allied powers for the first month.

Now, the first objection there raised is that it would not be right—that it would be unfair and illegal—to tie the hands of the other nations for five or six years; that in point of law it could not be done—that it would be illegal to do it. But that observation has a bearing the other way, because the effect of admitting all the other claims would be to render of comparatively little value the security which had been achieved by the exertions of the blockading powers. Mr. Bowen says it would be against law to postpone the claims of the other powers. I say that the other powers are so far fortunate in partaking, although after an interval, in the benefit of the security, which never would have been realized but for the efforts of the blockading powers; and I submit very respectfully to this tribunal that there is absolutely nothing in the point that it would be illegal to give a preference to those powers whose exertions had enforced the giving of this security. There is nothing to prevent any State, either voluntarily or under pressure, assigning a portion of its resources for the benefit of any particular creditor, and so far as that point of law is concerned, I am content to leave it to the tribunal.

The second objection raised by Mr. Bowen is that he ought not to realize that brute force alone can be respected in the collection of claims. Well, "brute force," I presume, is a term employed to denote warlike operations. Well, as between States, there is sometimes the necessity for war. It is a melancholy necessity, but that necessity exists, and to say that any advantage obtained is not to be regarded because it has been obtained by the use of force, is to strike a mortal blow at a great part of international law. It would shake the foundations on which settlements arrived at between nations rest, and I ask this tribunal, above all others, not to lend any

countenance to a view which would tend to so far unsettle those arrangements which, in many cases, have been arrived at as the result of war.

The third objection is this: "That if the allied powers wanted preferential treatment they should have asked for it in the beginning, and should not now propose it after I understood clearly that all the conditions of the allied powers had been stated." The allied powers insisted upon preferential treatment as soon as the claim was put forward that the other powers were to come in. At no earlier period would it have been possible to shape the claim in this form. Up to this point the allied powers had been insisting on prompt payment or an adequate security for prompt payment, and that claim had been recognized by Venezuela. So long as matters were proceeding on that footing there was no occasion to speak of preferential treatment. It was only when it was proposed, at this late stage of the transactions, to bring in the other powers, that it was necessary for the blockading powers to say that they would insist upon preferential treatment. On the 30th January Lord Lansdowne stated the views of His Majesty's Government in a dispatch which appears No. 255 in the British Blue Book on pages 222 and 223. He there points out the reasons for which he contended that the blockading powers were entitled to preferential treatment. I read on page 223. All the earlier parts of the dispatch, which is dated the 30th January and which begins at the bottom of page 222, I may without inconvenience, I think, omit. Near the bottom of page 223 Lord Lansdowne says this:

It seems that Mr. Bowen has not thought it possible to come to any arrangement which would not place on precisely the same footing all the powers who have claims for compensation from Venezuela. This is, in the opinion of His Majesty's Government, quite at variance with international practice and with principles of equity, and except at the instance of some competent tribunal of arbitration, they could not assent to it.

It must be remembered that neither the President of the United States, in his communications with His Majesty's Government, nor any of the blockading powers, nor, as far as I am aware, President Castro, have ever put forward a proposal of this nature. The preferential treatment for which the blockading powers have asked is not, it must be further remembered, one by which either the resources at the disposal of the Venezuelan Government for the payment of the external debt would be exhausted, or by which the so-called "diplomatic debt," which amounts to only 5.2 per cent of the total customs revenue of Venezuela, would be interfered with. The other powers will, without doubt, under the arrangements proposed by the blockading powers, be in a much more favorable position than they ever were before, and that, too, without incurring any of the trouble or

expense involved in the naval operations which have been undertaken. His Majesty's Government are of opinion, in these circumstances, that the method by which hostilities may be most expeditiously terminated would be by the reference of the question in dispute to the tribunal at The Hague, subject to the conditions already mentioned, unless, indeed, the President of the United States, in the interests of a prompt settlement, were to consent to decide the only point which seems to be an obstacle to the powers immediately interested in arriving at the complete "agreement." There Lord Lansdowne states in the most distinct and unequivocal terms that the proposal made was, in the opinion of His Majesty's Government, at variance with international practice and with principles of equity, and that it could not be assented to except at the instance of some competent tribunal of arbitration. He points out that no such proposal had previously ever been made, and that under the arrangement made the nonblockading powers would in the end profit, although they had borne no part of the burdens by which this result had been achieved. On the 2d February Mr. Bowen replied in a document which will be found at page 168 of the Venezuelan appendix, and to which I invite the attention of the tribunal. It is the document immediately following that document on page 168 on which I made some remarks at the commencement of this sitting.

On the 2d February Mr. Bowen writes to Sir Michael Herbert:

DEAR SIR MICHAEL: I have given due consideration to your Government's proposition that two-thirds of the 30 per cent of the customs receipts of La Guaira and Puerto Cabello be given to the allied powers, and that the remaining third be paid to the peace powers. That proposition I must decline. I can not accept, even in principle, that preferential treatment can be rightly obtained by blockades and bombardments. It would be absolutely offensive to modern civilization to recognize that principle, and to incorporate it into the law of nations, as it would have to be if the allied powers and the peace powers should agree to it and acknowledge it. Furthermore, that proposition is objectionable, because it would keep the allied powers allied for a period of over six years. Venezuela can not, I am sure, be expected to encourage the maintenance of alliances against her. On this side of the water we want peace, not alliances. Now, as the question of preferential treatment is the only one on which we have not agreed, I hereby propose that we leave that question to The Hague. What we have already agreed upon we can hold to and stand by. We need only to add to it that we have decided to submit the question of preferential treatment to The Hague.

So far that was very satisfactory, because it was an acceptance by Mr. Bowen of the suggestion in Lord Lansdowne's dispatch that that question might be disposed of by arbitration. But I venture most respectfully to protest against the sort of international legislation which Mr. Bowen seems to think it his duty to initiate in providing that he can not accept, even in principle, the doctrine that preferential treatment can be legally obtained by blockades and bombard-



ments. If Mr. Bowen's powers were equal to the strength of his convictions, and he could by a rescript put an end to war, it would be a most blessed consummation, but I am afraid that even Mr. Bowen must work under the conditions which now prevail in the world. One of these conditions is that sometimes there must be war, and nothing more fatal to arbitration could be conceived than any attempt to ignore the legitimate consequences of war. After that correspondence the protocols were signed, and the matter now comes before this tribunal under the protocol of the 13th February and the 7th May, which was entered into for the purpose of giving effect to it.

I have now concluded my review of the history of this matter so far as it seems to be material, and I claim to have established that the outline which I ventured to submit before I began to read these documents is correct. In the first place, that Great Britain was forced to take action; secondly, that before taking action she communicated with the powers and had their acquiescence, subject to reservations which are immaterial; thirdly, that from the first she insisted either on payment or adequate security for the claims which form the subject of the present discussion; and, fourthly, that when the question of the other powers who had not joined in these warlike operations being admitted as against the 30 per cent was first mooted, Great Britain insisted that it was not just and not equitable, and announced that she was content to leave it to arbitration, but, except under the decree of such a tribunal as this, could not consent to any such doctrine.

I now proceed to enunciate very shortly certain conclusions, which I submit follow from the history to which I invited the attention of the tribunal. The first of these conclusions is this: That the security of the 30 per cent of the customs of these two ports was procured by the blockade, and by the blockade only; that that blockade was undertaken at the sole risk and expense of the blockading powers, and with the acquiescence of the other powers concerned.

My second submission will be that the war was an absolutely just one, but that in truth no such question can properly be entered upon by any tribunal of arbitration. My third submission is that the documents establish that Venezuela agreed to give adequate security, and that that fact can not be overlooked when the tribunal proceeds to deal with a point which has been left to it. My fourth submission is that preferential treatment will not interfere with any rights which other powers enjoy. I propose now to take these propositions in their order, and to say a very few words upon each, avoiding repetition of what has been already said in considering the general history of the case.

My first proposition is that the existence of this fund is due to the blockade, a blockade undertaken at the sole risk and expense of



the blockading powers, and with the acquiescence of the other powers concerned. I do not know whether it will be contended by the most sanguine advocate that this security would have been obtained without the pressure which these warlike operations put upon Venezuela. If any such suggestion should be made, I am content to leave it to the judgment of the tribunal. The general history of Venezuela with regard to the claims upon it is well known, and I think that that history establishes beyond all doubt that Venezuela is not likely to provide securities for the creditors of Venezuela except under some pressure—the pressure either of actual warlike operations or strong diplomatic pressure with the possibility of such steps in the background. The treatment to which the British claims were exposed is sufficient to show that it was only by such operations that any security could be obtained, and I really shall reserve for the opportunity I may have of reply any further observations on the question whether or not the blockade was the efficient cause of this security being given. At present I submit that it can not be doubted. If any of my honorable opponents should venture to throw doubt upon that proposition, I may have an opportunity of commenting upon their remarks when the time for reply comes.

These proceedings were taken with the acquiescence of the other powers. I yesterday called the attention of the tribunal to the communications made to the United States of America, to France, and to Belgium, and to the fact that all these great powers with certain reservations, which for the present purpose are utterly immaterial, stated that they had no objection to the procedure proposed to be adopted. I further call the attention of the tribunal to the fact that, although the blockade and the seizure of the Venezuelan navy were matters of notoriety, no protest was received from any other power. And no offer is now made by any of the powers to share in the expenses of these operations. No warlike operations can be undertaken without a certain amount of risk. In that risk no other powers could now share, because the thing is passed. The expenses have been incurred; they do not offer to share in these expenses; it is not a matter referred to this tribunal; it is not a matter over which this tribunal has any jurisdiction, but without sharing in those expenses, without sharing in that risk, the claim is that they should share in the results which were achieved. That is all that I think it is necessary to say in support of my first proposition, in addition to those observations which I made while going through the documents yesterday.

My second proposition is that the war was a just war, that in truth that question is not open. Just or unjust, the results of war must be recognized. Now, I desire before making observations that I wish to lay before the tribunal under this head, to refer to what was said by Mr. MacVeagh on this subject—Mr. MacVeagh, who spoke on

behalf of Venezuela and the United States of America. I am reading from the printed copy of the shorthand notes of his speech—

(A copy was handed in.)

The passage that I desired to refer to in the first instance is on page 21, just below the middle of the page:

I now come next to the complaint, and I am obliged to ask your careful attention to these matters, because it will appear later on that they are all marshalled as justifying the proceedings upon the merit of which you are asked to afford preferential treatment. There is no doubt whatever if England, Germany, and Italy can satisfy this tribunal that they had adequate causes for declaring the war, which were of such a character as to merit your approval, then they are entitled to preferential treatment; but if they had no such causes as in your judgment justify the delivery of the ultimatums they delivered, and recourse to the force they employed, then it is impossible to award preferential treatment, and the far-reaching consequences of the character of these alleged outrages will be apparent when each of them has been examined as they are summarized in the note of the British Government demanding immediate reparation for these alleged wrongs, and upon failure to grant it the declaration of war which followed. Because, as I have already stated, it must be that their action was based upon necessity. Unnecessary war, of course, could not come here for an award of merit. This is the tribunal of the peace conference, and therefore not a tribunal which could possibly award merit to making war unless war was fully justified.

Then on page 24, Mr. MacVeagh recurs to this subject and uses the following expressions. Just below the middle of the page there occurs a passage which begins—

These are the matters and the only matters which led up to the declaration of war, and unless, therefore, your honors understand them, unless you weigh their importance, their gravity, the propriety of making them causes for war, you can never wisely know and decide whether the war was justified or not.

I should observe, in passing, that the case of *The Queen* had been entirely omitted from the matter to which Mr. MacVeagh directed the attention of the tribunal.

If the war was justified, then beyond any question these parties are entitled to your approval. If the war was not justified, then as certainly they are not entitled to your approval, so that the gist and marrow of the whole matter lies in the true character of the alleged occurrences which are claimed to have justified the declaration of war; and, as I said in the beginning, as the allies made common cause, the acts of one are binding upon them all, and, if we succeed in showing that Great Britain had no justification whatever for making war upon Venezuela, then we have succeeded in demonstrating beyond any possible question that she is not entitled, with her allies, to preferential treatment over the nations which did not make war. So that it is of the very essence of our controversy that you should know thoroughly each step taken toward the declaration of war, from the beginning of the outrages which are alleged to have justified it up to the moment when Lord Lansdowne instructed the British minister to present his ultimatum and allow Venezuela a very brief time indeed in which to accept it, and, in default of acceptance, to find her ports filled with the navies of Great Britain, Germany, and Italy. This is the meaning of the ethical question which is presented here; that is the reason why we have never thought

it required any detailed examination of facts, other than the facts alleged by the allies themselves, as not only justifying, but completely justifying, their action in declaring war. If they can satisfy you that they were so abundantly justified as to merit your affirmative approval, you must award them the preferential treatment they ask. If we can satisfy you that they were not justified in making war upon Venezuela, then you can not award them preferential treatment over the nations which desisted from making war. So that the whole marrow of the controversy, as we understand it, is there.

And then, on pages 26 and 27, in the passage which begins, "Rereferring again to the proposition I had the honor to present," two-thirds down page 26, he enunciates the same view:

Referring again to the proposition I had the honor to present to you that this is, after all, an ethical question which is presented by this controversy, and only an ethical question, I wish to say that I make that statement because it involves the construction of the duties of these blockading powers after the signing of the first convention of The Hague conference.

Therefore it involves the question of their duties, whether they discharge them as regulated by that convention in a manner to meet the approval of this tribunal is necessarily an ethical question, and is to be decided broadly upon the proposition: Was the war they waged upon Venezuela a just and necessary war or not.

And then again at the top of page 27:

It is a peace tribunal; it is in the interest of peace it was constituted; but a just and necessary war it is not, in my judgment, within the province of this tribunal to condemn. So that, after all, the question will recur when you retire for your final deliberations in this case, Was the war waged by these three great powers against Venezuela; was the seizing and sinking of her defenseless little ships, the bombarding of her old and defenseless forts, the closing of her ports to the commerce of the world, which Lord Lansdowne declared were, of course, acts of war, which the prime minister of Great Britain declared were of course, acts of war, were those acts of war just and necessary? If they were, and as those acts of war produced the fund you are about to distribute, then it will be necessary for you to consider whether the principle of the equality of states in distribution, such as were recognized in the case of China, should prevail, or whether the parties who, by a just and necessary war, produced the funds, are entitled to preferential treatment. But before you can reach that point you must have decided that it was a just and necessary war.

I have troubled the tribunal with those passages because they all proceed upon an assumption, which I submit is a correct assumption, that as the exertions of the blockading powers produced the fund they are entitled to preference, unless there was something in their conduct which disentitles them to that preference. That proposition underlies every one of the passages which I have read, and it is explicitly stated in the last passage, because he says: "If they were"—that is, if the acts of war were just and necessary—and as "those acts of war produced the fund, they are entitled to preferential treatment."

Now, M. Woeste in his observations, made on Wednesday, stated that he amicably separated himself from Mr. MacVeagh in Mr. Mac-

Veagh's views on the question of the justice or injustice of the war. M. Woeste thought it necessary to declare a sort of pacific blockade against Mr. MacVeagh upon this point. But, after all, I submit that the foundation on which these passages of Mr. MacVeagh's speech rests is perfectly sound. As the exertions of the blockading powers produced funds, he says it is necessary to inquire into the question whether those exertions were justified or not—whether the war was a just or an unjust one.

Now, in the first place, I submit to this tribunal with perfect confidence that this war was a just and a necessary one, and the first observation that I make in support of that contention is this: Venezuela in the protocol, which forms the basis of the reference to this tribunal, admits the justice of the claims of Great Britain and of the other blockading powers. It is only necessary to read the first article of the protocol of the 13th February, 1903:

The \* \* \* Venezuelan Government declare that they recognize in principle the justice of the claims which have been preferred by His Majesty's Government on behalf of the British subjects.

In the second place Mr. MacVeagh admits that, prior to the peace conference which resulted in the establishment of this tribunal, the warlike proceedings of the blockading powers would have been perfectly just. I will call attention to the passages in which that admission is made, and in which Mr. MacVeagh contends that the principles of international law have in some way been altered by the conference and by the establishment of this tribunal. I am going to submit to the tribunal that, great and beneficial as were the effects of that conference, great and beneficial as are the effects of the establishment of the tribunal which I have now the honor to address, no change whatever was made in the principles of international law by these great events. Mr. MacVeagh's contention will be found in his speech on pages 16 and 17, about the bottom of the page, and the last sentence but one of page 16 the passage begins, "Now, of course, it is not intended to pass judgment upon that [that is, the events of the last thirty years], but I want to be perfectly frank, and say that before the peace conference met there was no usage of international law which could be invoked to prevent or qualify the action of Great Britain, Germany, and Italy in collecting claims which they allege to be just from Venezuela by war, but after The Hague conference, and after this court was constituted, a totally different question arises. Before the peace conference met there was no usage or principle which had received the assent of the civilized nations of the world, and that I understand is a good rough definition of international law, the sum of the usages in the relations of States which have received the assent of the principal civilized nations of the world. It is not an imaginary moral law which lays the ground of

the Christian creed, it is the practical law which is embodied in the sum of the usages which the civilized States have agreed to regard as binding in their relations to each other. But from the day this peace convention was signed in this city by these three great nations, and an invitation was extended by them to all the nonsignatory powers to avail themselves of the jurisdiction of this tribunal, the situation has absolutely changed. Thenceforward, in the strictest construction of the law of nations, they were bound to conduct themselves toward Venezuela in accordance with the principles they had thus introduced into the law of nations, and to act toward her from the beginning to the end, not only according to the letter of The Hague Convention, but according to the spirit which permeated the members of the peace conference. So that at last the nations of the earth had reached a parting of the ways. Before the sending of that pact of peace and justice for the nations there were no such rules to be observed, but from the moment it was signed, then its letter and its spirit became obligatory upon every nation of the earth, for all the civilized nations in general terms had either signed it or adhered to it."

Now I submit that the question of making arbitration compulsory was considered at the conference. It would have been a most happy result if it had been possible to make arbitration compulsory, but the reasons against it were overwhelming. The possibility of rendering it compulsory in certain classes of cases was considered. It was dropped. Provision was made for mediation; provision was made for facilitating arbitration, and a most happy result it was of the labors of that conference. But there is nothing whatever in that conference, or in the constitution of this tribunal, which in any way alters the rules of international law. I shall listen with some curiosity to hear what reasons can be adduced in support of the proposition that any act which, in point of international law, was right before the peace conference became wrong after the peace conference, unless it involved some infraction of the terms of the convention which was then entered into. International law remains the same. The obligations of that pact—that solemn pact—must be observed. But so long as the provisions of that convention are observed, the rules of international law must be applied now after the convention as they had to be applied before the convention.

The third observation that I make with regard to the question of this being a just war is this: There was a long series and string of grievances culminating in the seizure of the *Queen*, grievances committed by Venezuela against Great Britain. These grievances were enumerated in the dispatch of the 29th of July, 1902, from Lord Lansdowne to Mr. Haggard, to which I called attention yesterday, and the terms of which, in substance, I read, and in that dispatch all



that His Majesty's Government asked for was assurance that such acts should not be repeated, and that compensation should be paid for them. In the ultimatum arbitration was proposed by His Majesty's Government—reference to a mixed commission—and in the third place Venezuela absolutely declined even to discuss the claims of His Majesty's Government, uniformly putting forward those complaints with regard to the *Ban Righ*, which I submitted yesterday to the judgment of this court were in their nature absolutely frivolous.

And in the fourth place Venezuela, while refusing to discuss these grievances, never asked for arbitration, and refused arbitration when it was offered by Germany. I am not going to repeat the observations that I made yesterday with regard to the causes which lead up to war by Great Britain against Venezuela, but I submit that when these cases are looked into, when these series of outrages committed by Venezuela, culminating in one of the most high-handed actions that ever was perpetrated, viz, the seizure of a British vessel upon the high seas. When these acts are examined into, and when the conduct of Venezuela in even refusing to discuss the subject of these grievances is considered, the conclusion must be reached that this was a case in which, from every point of view, whether it be looked at by the light of the law of nations, or by any ethical standard which may be applied, Great Britain was thoroughly justified then in the measures which she took.

But I submit in the second place, with regard to this proposition, as to the justice or injustice of the war, that that is a matter which this tribunal has really no jurisdiction to inquire into; not only is the justice of the British claim submitted in the document which constitutes the basis upon which this tribunal sits, to adjudicate upon the matters in dispute, but it is contrary to all principles of international law for any tribunal, unless by very special submission, by a very special contract, it were empowered to enter upon such an extraordinary inquiry, an inquiry into matters affecting the relation of nations as to the justice or injustice of war. In the absence of such a very special submission to arbitration, I very respectfully put it to the tribunal that it would be contrary to the very principle of international law that such an inquiry should be embarked upon.

I observe that in the speech of M. Woeste, on behalf of Belgium, on Wednesday, he rather takes that view. There is a passage which occurs in the fourth page of the note which I have. When they are printed no doubt the page will be different, but I desire to call the attention of the tribunal to a passage which occurs on the fourth page of the manuscript which I have, where he says this:

Ici, je vous dirai d'abord, que je me sépare amicalement du délégué des États-Unis, qui a parlé au nom du Vénézuéla. Il vous présenta la maxime: la guerre, était-elle juste ou non? Comme délégué de la Belgique, je n'ai pas, et ne veux pas, avoir d'opinion sur cette question.



And in saying that M. Woeste was only acting in conformity with the well-established principles of international law.

Mr. MacVeagh's observations send me back to works which must always be mentioned with respect, and more particularly mentioned with respect in the country where this tribunal now sits—I mean the works of Grotius and Puffendorf. Those great jurists discuss at very considerable length the causes of war which constitute the war just and those causes which constitute the war an unjust one. Whole chapters are devoted to this subject, and they contain a great deal of very curious matter, which, if time were not of value, might diversify these proceedings. Grotius brings this question to a practical application when in one passage he says that the right of transit over the territory of a neutral may depend on the question whether the war was a just or an unjust war. It is not necessary for me to say that all such doctrines are now absolutely exploded. It is impossible in a matter of international law to enter into the question of justice or injustice. The causes of wars—those events which lead to wars—often are so deep that such an inquiry is impossible. I venture to say that if one reviews the history of the world it will be found in the vast majority of cases that the apparent causes of war have not been the real causes of war—that the causes lay deeper, and that the wars were entailed by events, by a long series of transactions, which it would be impossible for any court adequately to take into consideration. For such reasons it is the common consent of all writers upon international law, now that such inquiry is barred, that international law recognizes the right which every State has to enter upon war, and recognizes the results of war. I shall trouble the tribunal only with two passages—one from the work of M. Rivier on the "*Droit des Gens*," and the other from the work of that eminent jurist, Mr. Hall, who, unhappily, has been lost to the world. I am reading from Rivier, the *Droit des Gens*, second volume, *Principes du Droit des Gens*, at pages 202, and 203. The essential part of the passage is set out in the British counter case at page 42:

3. La distinction de la guerre juste et de la guerre injuste est juridiquement sans valeur, tout en pouvant avoir une haute portée morale et par la même politique. Quelque importance que doive attacher un belligérant au fait d'avoir pour lui l'opinion publique des nations et les sympathies des gens de bien, aucune différence n'existe entre les lois de la guerre injuste et celle de la guerre juste, et les effets de l'une et de l'autre sont identiques.

In Mr. Hall's work there will be found a passage to a similar effect, which is also cited in the British counter case at page 41. It occurs in Mr. Hall's book, *Treatise on International Law*, by William Edward Hall, the fourth edition, at page 63:

As international law is destitute of any judicial or administrative machinery, it leaves States which think themselves aggrieved, and which have exhausted all

peaceable methods of obtaining satisfaction, to exact redress for themselves by force. It thus recognizes war as a permitted mode of giving effect to its decisions. Theoretically, therefore, as it professes to cover the whole field of the relations of States which can be brought within the scope of the law, it ought to determine the causes for which war can be justly undertaken; in other words, it ought to mark out as plainly as municipal law what constitutes a wrong for which a remedy may be sought at law. It might also not unreasonably go on to discourage the commission of wrongs by investing a State seeking redress with special rights, as by subjecting a wrong doer to special disabilities. The first of these ends it attains to a certain degree, though very imperfectly.

I pass over that, because it is not material to the present purpose.

The second end international law does not even endeavor to attain. However able law might be to declare one of two combatants to have committed a wrong, it would be idle for it to effect to impart the character of a penalty to war when it is powerless to enforce its decisions. The obedience which is paid to law must be a willing obedience, and when a State has taken up arms unjustly it is useless to expect it to acquiesce in the imposition of penalties for its acts. International law has consequently no alternative but to accept war independently of the justice of its origin as a relation which the parties to it may set up if they choose, and to busy itself only in regulating the effects of the relation. Hence, both parties to every war are regarded as being in an identical legal position, and consequently as being possessed of equal rights.

Of course, in that passage the eminent jurist who wrote that treatise was not dealing with the very special case which might arise where nations submitted to such a tribunal as this the question whether a particular war was just or unjust. That question nations may submit if they please. No such question has been submitted in the present case, and I venture to think that it would, if I may express my concurrence with what was said by M. Woeste, be inviting this or any tribunal to enter upon very delicate ground indeed, if it were asked to express its opinion upon the justice or injustice of war. No such submission has been made on the present occasion, and I venture to think that it will be the sense of the tribunal that, unless under the most special circumstances which deserve very exceptional treatment, it is better that such question should not be agitated before this tribunal at all. That is what I have to say with regard to the second submission that I made as resulting from a consideration of the whole of this case, my second proposition being that the war was just, but that the question of the justice or injustice of the war can not be inquired into—that the results of the war must be recognized.

Now, my third proposition is that Venezuela, under the pressure of these warlike proceedings, expressly agreed to give security adequate for the satisfaction of the claims which now form the subject of discussion. I need not labor that point. To do so would be to repeat what I said yesterday, and to refer again to documents which I read yesterday, so far as they are material—I only recall attention to the fact that on the 23d January in the document appearing at page 164 of the

appendix to the Venezuelan case the condition as to adequate security was accepted—that that had been accepted by President Castro, and that it was stated in the postscript to the telegram of the 9th January (No. 228 in the British Blue Book), that the guarantee would be the custom-house. I submit that nothing happened afterwards to alter that agreement. It is perfectly true that the proposal was made to introduce the other powers as competitors for a share of this fund; but as soon as that proposal was made Great Britain objected to it as consonant neither to justice nor to equity, and said that she was content to leave that question to the decision of this tribunal. A point seemed to be raised, as I indicated this morning, that there was something illegal in giving such a preference. I submit with every confidence to the tribunal that it can not seriously be contended that there is anything to prevent a nation from giving to the creditors of another particular nation any portion of its revenues as security for her debt. Why, the very history of Venezuela shows that such transactions are perfectly legal. France and Belgium both obtained security, France twice; the diplomatic debt was constituted giving security to certain particular claims against Venezuela. Is it contended that that was an illegal transaction? A special security was given to the Water Company of Caracas, in which Belgium is specially interested. Is it contended that that was an illegal transaction? There is nothing whatever to prevent a nation from assigning any portion of its resources to any one of its creditors. And what may be done voluntarily in time of peace may be done under pressure in time of war. I therefore submit, under this third head, that the agreement for adequate security which results from the consideration of the history of this transaction is one which must be adhered to; and I invite the tribunal to give effect by its decision to that arrangement which the parties themselves had arrived at. My fourth proposition is, that there is nothing in the preferential treatment which in any way interferes with any rights which other powers have. They have no right to complain of the fact that the blockading powers have this preference as the result of their exertions. This is not a case of bankruptcy, there is no bankruptcy of a State.

There is no procedure known to international law by which a country can be wound up as if it were a corporation subject to municipal law; there is no procedure by which a country can be declared bankrupt and all its assets divided among its creditors; and, to do Venezuela justice, although it has shown a great disinclination to pay its creditors, there is no reason for believing that Venezuela is unable to pay its creditors. But no such procedure is known to the law of nations; no vested rights of any nation are interfered with—in fact, no such allegation can be made. The only vested rights enjoyed by other nations are of such securities as are referred to by the French

and Belgium Governments in their replies to Lord Lansdowne's communications before war was commenced. They said that they had these rights, and they must insist on these rights being observed. And they are. Effect is given to them. We do not claim for one moment to interfere with the security of 5.2 on the customs in respect of the diplomatic debt, and the security on the 10.8, I think, of the customs in regard to the Water Company of Caracas, and I therefore submit that the other creditor powers could not make any arrangement by their protocols with Venezuela which would have the effect of defeating the rights which had previously accrued to the blockading powers. But, in the second place, the fundamental fallacy which lies at the root of the contention which appears to be indicated on this head by the opponents of preferential treatment is, I submit, this: They treat this assignment of the 30 per cent of the customs of these two ports as if it were a voluntary assignment by Venezuela for the benefit of all the creditors of Venezuela. If that were the case there would be no question for the court at all; if that were the basis of the transaction why are we all here? The truth is, that this was an assignment under pressure, an assignment secured by the exertions of the blockading powers, and an assignment which, I submit, can not be taken from them by the proposed admission of a number of other claims which will swamp those of the creditors who belong to the blockading powers. M. Woeste referred to this subject in a passage which I find on page 6 of the manuscript notes, to which I invite the attention of the tribunal.

I rejoice with M. Woeste that the warlike operations were put an end to in order that this question might be amicably determined before this tribunal, but I very respectfully submit that if M. Woeste's contention were right, that this case is to be dealt with as if it had been an assignment voluntarily made by Venezuela for the benefit of all her creditors, if that contention were to have effect given to it, the result would be to nip any such future references in the bud. It would have been better if that contention were to prevail; far better that the blockading powers should have insisted upon it without any reference, without any amicable discussion, that the security should be assigned absolutely to them and to them alone. For the purpose of putting an end to war they were content to leave the question of preference to this tribunal. We have come before this tribunal in full confidence as to the grounds which we urge for that preference, and I very respectfully submit that, in the interests of peace, it would be calamitous if effect were to be given to the doctrine which is indicated, that because such a reference has been made the fact that the security was obtained by warlike operations is to deprive those powers who undertook those oper-

ations substantially of the special benefits which they were fairly entitled to expect to reap from them, and were to remit them to a position which they would not have occupied if, instead of cutting the war short and replacing it by a peaceful arbitrament, they had prosecuted the war to the bitter end.

In this same connection I ought to refer to a passage in the statement put forward by Mr. Bowen in the supplementary statement on behalf of the United States. It is the document in the yellow cover. I shall read at the middle of page 31; the passage is not a long one—I had better begin, perhaps, at the top of the page:

The demand of the allied powers for preferential treatment indicates a complete indifference to the rights of others. Nations, like individuals, must respect the rights of others, or be prepared to incur the peril of being forced to respect them. Municipal law protects the individual and can punish violations of his rights. International law, in the same way, protects the nation in principle, but in practice the nation must protect itself, unless it can induce some third nation to intervene, or can get its cause submitted to arbitration.

Then follows this passage, to which I invite attention:

There can be no doubt that if the allied powers had seized the revenues of Venezuela and appropriated them for the exclusive purpose of paying to themselves the amount of their own claims the other claimant nations would have been perfectly justified in maintaining that the allied powers had trampled on their rights by appropriating to themselves revenues out of which the other claimant nations expected to have their claims paid. That consideration prevented the allied powers from insisting on appropriating to themselves the 30 per cent of the revenues of La Guaira and Puerto Cabello, which forced them to bring their claims to The Hague Tribunal. In other words, the allied powers realized that if they insisted on taking the whole 30 per cent by force the other claimant nations would be justified in trying to prevent them by force from carrying out their object.

On that passage I very respectfully invite the opinion of the tribunal. Can it be contended that it would have afforded any legitimate ground for war on the part of any of the other powers if the blockading powers had insisted on the performance of that promise which Venezuela had made to provide to the blockading powers adequate security for the prompt payment of those claims, in respect of which the blockading powers had recourse to coercive measures? Can it be suggested that such a war would have been a just war? What rights would have been interfered with? What right would any one power have to say to Venezuela—

You are not to dispose of such and such a part of your resources; you are to be treated as holding all the resources of Venezuela in trust for all your creditors alike, and we can not recognize your right to dispose of any part of those revenues for the purpose of securing the claims of any particular creditor powers, however beneficial it may be to Venezuela that such an arrangement should be made.



I very respectfully submit that such a claim as is here stated, as if it were an elementary principle of international law, is absolutely unheard of. Then this passage goes on:

To avert, therefore, the possibility of war, they consented to present the matter to The Hague Tribunal for decision. It was a wise and creditable step for them to take, for now this tribunal is afforded the opportunity to establish a precedent, which will decide the question as to whether or not a claimant nation, having undertaken a war against a debtor nation, may attempt to settle its claims in such a way as to derogate from the rights of other claimant nations, and thus provide them with a reasonable cause of complaint that might induce them to maintain their rights by force. Forcible methods beget forcible methods in such a case as this, and peaceable methods beget peaceable methods, all contentions and arguments of the allied powers to the contrary notwithstanding.

I submit that the true cause of this reference is to be found in the anxiety, and a very proper anxiety, of the blockading powers to discontinue further prosecution of warlike operations. The suggestion that the true motive was a feeling that any other creditor power would have been justified in taking warlike measures if the Government of Venezuela had given to the blockading powers that security for their claims which it had promised is absolutely unfounded, as would be the suggestion that this special security given to France or Belgium was invalid because, forsooth, it might trench upon the rights of other creditor nations. There is no vested right which is interfered with, and there is no doctrine of international law which prevents any State disposing of its resources as it may seem best for its own advantage, even although that disposition is made in favor of a particular creditor. I claim very respectfully, therefore, to have established those four propositions that this security was produced by the measures of the blockading powers, taken with the acquiescence of the other powers, and at the sole risk and expense of the blockading powers; secondly, that the war was a thoroughly just war, but that that question is really not one upon which this tribunal can enter, because the results of the war must be recognized; thirdly, that Venezuela agreed, under the pressure of those measures, to give adequate security; and, fourthly, that there is nothing whatever in the preference, of which we say we can not be deprived, which in any way interferes with the vested rights of any other power.

Now remains for me only to say a very few words with regard to certain securities which have been taken by France and by Belgium. I shall be extremely brief upon this point, because the questions of principle with which I have been dealing are of much greater importance, and if, as we trust, the reference is established for the blockading powers, all other questions sink into insignificance, and, indeed, do not arise in this case.



In the case of France, special arrangements were made for the discharge of debts to French subjects in 1885 and in February, 1902. Under this arrangement certain securities were hypothecated for the discharge of French claims. With these securities we do not claim in the slightest degree to interfere; no preference that we ask as regards the 30 per cent can affect the prior claims which France has under these securities. We recognize the right of Venezuela to deal in this matter with France, as we insist that Venezuela had the right to deal with the blockading powers. Venezuela had the right to assign to French creditors certain securities for their protection; she made that assignment, and that assignment we respect. We do not ask this tribunal to do anything which in the slightest degree would trench upon the rights acquired under those arrangements. In the same way Belgium acquired rights in respect to the water company of Caracas. The history of the securities for that company appears in a document which is before the court, and as I may refer to it, it will enable me to make my statement on this head extremely brief. It is a document entitled "Statement of facts concerning the claims of the Caracas Water Supply Company." This is annexed to the Belgian case, and is before the tribunal. It will be found, on looking at that document, that in 1890 a concession was given by the Venezuelan Government to a company for the supply of water to Caracas, that that company issued a number of bonds representing a total capital of more than 8,000,000 francs, and that these bonds were secured by mortgage on the property of the company. In 1895 the whole undertaking of the company was transferred to the Venezuelan Government at a total price of nearly 11,000,000 francs—10,792,000 francs—and a presidential decree was issued at the date of that transfer, the 31st October, 1895, establishing a special internal debt, the Caracas water-supply debt, and 50,000 francs a month were to be applied for interest and redemption. Bonds were issued by the Government, and they were secured on the receipts from the water company for the supply of the water and on the surplus of the 10.8 of the customs charged for internal debt. That was the special security that was given; that security being enjoyed in respect of those bonds. Things went on for two years, when further payment on those bonds was suspended, and, owing to the circumstances that diplomatic relations between Belgium and Venezuela were broken off and were not renewed until 1900, nothing could be done. In 1901 some small payments were made on account of the bonds.

Now, after an arrangement entered into by the blockading powers in the protocol of the 13th February, a protocol was entered into by Belgium with Venezuela, according to which the first article—"toutes les réclamations belges"—was to be referred to the mixed commission. I need not read the rest of the protocol. That protocol is dated the

7th March, 1903, and it has been stated by M. Woeste that the mixed commission decided not merely on the amount of the arrears, but also decided that these debts were chargeable against the 30 per cent of the customs of La Guaira and Puerto Cabello. All I can say is, if the mixed commission decided that, they had no authority whatever to decide anything of the kind. No tribunal but the present has a right to decide on that matter. It is for this tribunal to decide as to the disposition of the 30 per cent of the customs. As to whether these claims can come in against the 30 per cent there may be a question, but it certainly was not a question for a mixed commission. Here, again, I submit that the Belgian creditors must rest upon the security which they have obtained. We do not seek to impinge upon that security at all. We recognize the right of Venezuela to dispose of their resources. We recognize the equality of nations. Would it be listened to for one moment if a great power were told, "You can not dispose of any part of your resources, because there are other powers in favor of creditors of any other particular power, because there are other creditors belonging to other powers who have claims against you?" Would such a pretension be tolerated? We, on behalf of Great Britain, recognize the equality of nations. Venezuela, as a nation, has exactly the same right to dispose of her resources that any great nation of the world has, and such a disposition once made can not impugned. We recognize the disposition in favor of France, we recognize the disposition in favor of Belgium, but with regard to the 30 per cent of the customs of La Guaira and Puerto Cabello we say that the blockading powers are, in justice and in equity, entitled to preferential treatment.

I do not propose longer to occupy the time of the tribunal. I have the advantage of the assistance of my friend Mr. Cohen and my friend Mr. Richards, who will address the tribunal, and I shall conclude my observations by expressing the earnest hope that the claim of the blockading powers will be recognized, and that these proceedings, which have had the happy effect of putting an end to warlike operations and replacing them by peaceful arbitration, will not have the result which might read nations the lesson that it is better to prosecute war to the bitter end rather than to cut it short in order to have recourse to peaceful arbitrament.

I leave the case of Great Britain, so far as I am concerned, with every confidence in the hands of the tribunal.

Mr. COHEN. Mr. President, had it not been for the command of the attorney-general I should not have ventured to intrude upon your time on the present occasion, for I should have thought that no remarks proceeding from me could be of much value after the strong, the weighty, the logical argument of the learned counsel for Germany, and after the elaborate argument of the attorney-general, which I

should have ventured to call conclusive were I not on his side. Still, I must obey the orders of my leader, but I am sure, gentlemen, you will be glad to be assured that I shall occupy your time only very briefly indeed.

It is submitted at the beginning of the British counter case that it will ultimately be found that the decision of this question which is now before this tribunal is whether or not, under the circumstances existing at the time of the signing of the protocol, there was a legal right on the part of the other creditor powers to come in and to claim to share *pari passu* the security which was obtained by the blockading powers.

Now, if that view be correct, it is manifest that, for the purpose of ascertaining the solution of that question, you must look at the position of the parties at the time of the signing of the protocols, and for that purpose it is necessary to examine carefully the negotiations which took place from the beginning until the end of this transaction.

Now, I dare say you will have noticed, you must have noticed, that these negotiations are almost entirely omitted from the Venezuelan case; and that, on the other hand, one-third of that case—I have counted the pages—one-third at least of that case is occupied by the investigation of the seizure of various vessels, the *Pastor*, the *Sea Horse*, and the others, omitting almost entirely, as you will remember, the most important case, that of the *Queen*, which was the flagrant case which constituted, as it were, the culminating point in the insults offered by Venezuela to Great Britain.

One is here reminded of a saying of him who was probably one of the most brilliant advocates that ever lived, Lord Erskine. He said: "It is the well-known artifice of a clever advocate to pass over in silence a statement which he can not deny or an argument which he can not refute." But, in truth, the justice of the British claim can not be here in dispute, it can not be here a matter of controversy, for the reason which I am about to state, and which was also indicated by the attorney-general.

The protocol is itself recited in the compromis on the 7th of May—it is incorporated in it. Now, according to the first article of the protocol, the justice of the British claims is admitted, and it is from the compromis alone that this tribunal derives its jurisdiction. The compromis recites the protocol. It was in consideration of the admission contained in the protocol of the justice of the British claim that the blockade was raised and the Venezuelan vessels were restored. It therefore would be, Mr. President, I submit, with confidence, contrary to the most elementary and fundamental principles of jurisprudence to allow a person or a power which was a party to this compromis reciting the protocol, which itself contains the formal admission on the strength of which the compromis was signed, viz,

that the claims are just—it would be contrary, I say, to the most elementary principles of jurisprudence to allow a party to the compromis to deny before the tribunal, which derives its jurisdiction alone from the compromis, the truth of the formal admission so contained in the protocol. His excellency, M. de Martens, was an arbitrator in the Pious Fund case, which involved an interesting question relating to what we call in England estoppel, and what in other countries is called “preclusion,” and he will remember how the many cases cited in that case established the principle that if a document contains an admission on the strength of which stipulations in the document are made, then the party signing the document is estopped from denying the truth of that admission. I pray that principle in aid, and I say that, for this reason, the justice of the British claims is not a question that has to be decided by this tribunal.

Nor can Venezuela be allowed to say that that admission is not binding because it was extorted by force or warlike measures. In the first place, President Castro—I will not stop to examine the correctness of his statement—said, in one of his last dispatches, as you will remember, that Venezuela had all along been ready to satisfy the claims, thereby admitting that the claims were just. But in the second place there is, I venture to assert, a fundamental distinction between private contracts—I mean contracts made between private individuals—and contracts made between States, in this respect—that in the former the contract is voidable if extorted by force; whereas in the latter it is perfectly valid, although brought about by warlike measures. I will venture to cite in support of that proposition a statement in Wheaton, section 267:

By the general principles of private jurisprudence, recognized by most, if not all civilized countries, a contract obtained by violence is void. Freedom of consent is essential to the validity of every agreement, and contracts obtained under duress are void because the general welfare of society requires that they should be so. If they were binding, the timid would consequently be forced by threats or by violence into the surrender of their just rights. The notoriety of the rule that such engagements are void makes the attempt to extort them among the rarest of human crimes. On the other hand, the welfare of society requires that an engagement entered into by a nation under such duress as is implied by the defeat of its military forces, the distress of its people and the occupation of its territories by the enemy, should be held binding, for if they were not, wars could only be terminated by the utter subjection and ruin of the weaker party.

That passage only embodies what is to be found in other books—I will not read the passages from the other books, but I will, with the permission of the court, give the references. The same thing is stated by Professor Woolsey in sections 408 and 409 in his well-known work, and the same thing is stated in Mr. Hall’s work on international law on page 341, which is set out at page 64 of the British

case. Therefore Venezuela is precluded from denying the justice of the claims, the amounts of which, and the amounts of which alone, are referred to the mixed commission.

As regards the other creditor powers, they do not, and evidently can not, deny the justice of these claims. And before I pass from this point let me make this observation, which may perhaps be not quite unworthy of attention. The other creditor powers have no locus standi here at all, except because they adhere to the compromise. It is only for that reason, and by that reason alone, that they can ask for the interference or protection of this tribunal; and therefore they must abide by that interpretation of the compromise and the protocols, which would be the proper interpretation as between Venezuela and the blockading powers.

Now, gentlemen, although for these reasons the justice of these claims can not be a matter of dispute or controversy, yet, as I said before, the discussion of them occupies almost the greatest part of the Venezuelan case, whereas the Venezuelan case is almost entirely silent about the negotiations. In short, the Venezuelan case omits entirely what is relevant, and discusses elaborately what is irrelevant.

Now a word about the negotiations. Mr. President, I hope you will not think for a moment that I am going through those negotiations again; they have been narrated, and they have been explained elaborately by the attorney-general, and the observations which I am going to make with respect to them will not occupy more than two or three minutes.

You will remember that on the 11th November a serious warning was addressed by the British Government to Venezuela in the dispatch which is set out on page 163 of the British Blue Book. To this the Venezuelan Government replied by refusing to take into consideration or to enter into any discussion whatsoever with the British Government concerning those claims. On the first occasion you will remember that the Venezuelan Government said, in terms which certainly would not have been used, I think, by any great power, that:

They were accustomed to such communications.

On the second occasion they said:

Oh, we can not enter into any discussion with you, Great Britain, because you have not made compensation in respect of the *Ban Righ*.

Now, the attorney-general has proved that this was, in truth, a frivolous excuse. As regards the *Ban Righ*, the attorney-general, I maintain, has established that she was released by the order of the Marquis of Lansdowne only after he had carefully ascertained, in the first place, that she had been purchased by the Colombian Government as a man-of-war, and, in the second place, that there was peace between Venezuela and Colombia; and what do you think, I ask you.



gentlemen, of a case which requires to be supported by the argument implied in the question, "What if poor Venezuela in its dire necessity had to admit a falsehood?" Now, as regards the *Ban Righ*, just one other word. Even if Venezuela had had a strong case—a strong claim—that would have been no excuse whatever for her absolutely refusing to take into account the claims which Great Britain presented. Take the case of the great civil war of the United States. Great Britain thought that she had not violated any rule of international law with respect to *Alabama*; she therefore refused to give any compensation or to make any apology, but still whenever any injury was sustained by British subjects from acts done by the forces of the United States, did America ever say to Great Britain, "We can not discuss these claims; you must first make us compensation with respect to *Alabama*?" Was that the language used by Mr. Seward in the *Trent* affair? Did Mr. Seward then, when England strongly remonstrated against the conduct of the United States in removing Messrs. Mason and Slidell from the English mail steamer, think it proper to say, "You may have a case against us, but we will not apologize; we will not discuss it, because in respect of the *Alabama*, we have a case against you, and you refused to make compensation?" I say, therefore, in the first place, the *Ban Righ* was a frivolous excuse, and, in the second place, if it was not it would have been no valid excuse for the contemptuous dismissal of the British claims.

I come now to one other dispatch; that was a dispatch of the 11th November, and I only wish to mention it in order to remind the court that with the exception of the claim in respect of false imprisonment or maltreatment of British subjects His Majesty's Government at that early period stated that they would be prepared to accept the decision of a mixed commission with regard to the amount of the claims and the security for the payment of those claims. To this remonstrance no satisfactory answer was given. Again the *Ban Righ* was flouted in our faces, and we could not obtain satisfaction. And then came the ultimatum of the 7th December.

Now, it is distinctly admitted, as was pointed out by the attorney-general, at page 46 of the Venezuelan case, both in the Venezuelan case and in the argument of Mr. MacVeagh, that if the war was just Great Britain ought to succeed. In the second place, it was distinctly admitted in the Venezuelan case at page 46, in the passage read by the attorney-general, that if this had happened before the peace conference Great Britain would have been perfectly justified in the war-like measures she had taken. You will remember those distinct admissions. But, in order to counteract the force of the second admission, it is argued, amid a blaze of rhetorical declamation, from pages 46 to 57 in the Venezuelan counter case, that all this was changed by the peace conference and the convention of The Hague, and it is upon



this point that the attorney-general wishes me to address one or two observations to the court. His Majesty's Government, as the attorney-general says, insists most strongly that neither the peace conference nor The Hague Convention impliedly altered any rule of international law that existed previously. Of course it may have done so expressly as regards the usages of war, and other things, but never impliedly, and the attorney-general stated that, according to the peace conference and the convention of The Hague, arbitration was not to be obligatory, but perfectly voluntary.

Now, if there could be any doubt about this point at all, after what has been said by the attorney-general, it would, I think, be entirely dispelled by a reference to the Russian scheme which was laid before the peace conference, and to that I desire for a moment to invite the serious attention of this tribunal. Submission to arbitration—this is my point—was intended to be entirely voluntary and not legally obligatory. It appears, from page 156 of the report of the peace conference, that it was provided by the ninth article of the scheme proposed at that conference by Russia. Will you excuse my very bad French if I read it?

*Dans les litiges d'ordre international n'engageant ni l'honneur ni des intérêts essentiels et provenant d'une divergence d'appréciation sur des points de fait, les puissances signataires jugent utile que les parties qui n'auraient pu se mettre d'accord pas les voies diplomatiques instituent, en tant que les circonstances le permettront, une commission internationale d'enquête chargée de faciliter la solution de ces litiges, en éclaircissant, par un examen impartial et consciencieux, les questions de fait.*

So that, according to that article, except in two cases, arbitration was to be entirely voluntary.

Now, there are two cases excepted in the tenth article, and one of those cases is the very case before this tribunal. It is a case where: "En cas de différends ou de contestations se rapportant à des dommages pécuniaires éprouvés par un Etat, à la suite d'actions illicites ou de négligence d'un autre Etat."

Thus, according to the Russian scheme, it was intended, and it was proposed, that no warlike measures should be taken in order to recover damages for injuries sustained, except there had been a previous investigation and determination by a tribunal of arbitration.

Well, that scheme, which in almost all its parts was adopted and which was a noble scheme, was carefully considered at the conference, but these two clauses were, after careful deliberation, excluded because, unless I have misread the reports to the conference, the majority of the members were strongly of opinion that in all cases arbitration should be voluntary and not obligatory.

If, indeed, there still lingered any doubt about this point, would it not be removed entirely by the last treaty which was recently con-

cluded between France and Great Britain—a treaty so carefully guarded in its terms and carefully limited in its provisions? Now, manifestly there would have been no *raison d'être* for that treaty, there would have been no necessity for that treaty, if arbitration was in all cases to be obligatory and was not merely voluntary.

I hope now I have performed that part of the duty which was imposed upon me by the attorney-general, and have satisfied the tribunal which I have the honor of addressing that under The Hague Convention and after the peace conference arbitration remained as before, voluntary, and was not obligatory. But if this be so, what answer is there to the following argument? What flaw is there in the following reasoning?

It is admitted that if the war was just Great Britain must succeed here—when I say Great Britain, I mean the blockading powers. It is admitted that before the peace conference the war would have been just, and now I have proved that the rules of international law are not modified or altered at all in this respect by the peace conference or The Hague Convention. Does it not then follow as clearly as any proposition in Euclid that if these admissions are admissions binding the other side the blockading powers ought to succeed in their case?

There is, Mr. President, one other point to which I am instructed by the attorney-general to apply myself for a very short time, and that is with reference to the maxim, which has been cited so frequently on the other side, that “equality is equity.” That maxim has been cited by my learned opponents constantly, as if it were a fundamental principle of international law, as if it not only had a direct bearing upon this case, but as if it afforded an easy and a certain solution of the question to be decided by this court. Now, I venture to assert three propositions about this maxim. In the first place, I venture to assert, with great deference and respect, that the maxim “Equality is equity” is not a maxim of international law at all; in the second place, that the maxim, whatever it may mean, can have no application to the present case, because the parties do not stand—and did not stand—in an equal position, and therefore there was no equality; and, in the third place, I admit—indeed, I wish to argue and to prove—that the maxim does not obtain in civil and municipal law and in equity jurisprudence, and that it follows from the meaning which it has in that system of jurisprudence, in that system of civil and municipal law, if it be applied by analogy to the present case, that it will follow that the blockading powers are in the right and the other creditor powers in the wrong.

Now, my first point is that the maxim “Equality is equity” is not to be found, I assert, in any authority on international law. Equity, indeed, is mentioned over and over again in works on international law, but only for the purpose of denoting that great and fundamental

proposition of international law which was established by the peace of Westphalia and by Grotius and his successors, the great principle that in the eye of the law all powers, be they great or small, be they feeble or powerful, are equal.

Now, to that proposition Great Britain readily assents, but it also considers that equal rights imply equal obligations. To that proposition Great Britain readily assents, but that proposition impliedly negatives the proposition contended for by Mr. MacVeagh, that Venezuela, because she is a weak power, is to be allowed with impunity to commit outrages against British subjects and British vessels. No; she has equal rights because she has equal obligations. Nor does that maxim entitle Mr. MacVeagh to say that Venezuela should be allowed immunity because she was a weak State in an alarmed and, you will remember the expression, in an "hysterical" condition. Those were Mr. MacVeagh's words, and in order to prove her hysterical condition that learned counsel cited two articles written by two anonymous writers in an English periodical and an American periodical, published when? In July, 1903, nearly a year after the occurrence of these events, which are the subject-matter of the question before this tribunal. What can be the strength of a case which requires such an argument to support it and such authorities to be cited in support of it?

In the second place, I submit that the maxim has no application to the present case, because the parties were not, in fact, in an equal position. The attorney-general has, I submit, established that Venezuela had distinctly refused to take into consideration, or even to enter into any discussion, as to the grievances sustained by British subjects. It is also shown in our counter case that it was the warlike measures (in fact, there can not be any longer any doubt on this point, after the argument of the attorney-general) taken by the blockading powers, and only the warlike measures that were taken by the blockading powers, which produced the fund, the benefit of which is attempted to be shared by the other contracting powers.

Finally, the attorney-general has, I think, proved beyond a doubt—and I wish to emphasize most strongly this third point—that before any agreement whatever had been come to between Venezuela and the other creditor powers, there had been concluded a binding agreement between Venezuela and the blockading powers that adequate security should be provided for the satisfaction of their claims.

Now, if there was such a binding agreement, then I think the court will agree with me when I venture respectfully to assert that, according to the rules of international law, the other creditor powers would not have been justified in preventing, and are not justified now in attempting to prevent, Venezuela from performing the obligations which she had contracted formally with Great Britain and the other

blockading powers. The proposition I assert is this: If there was at one time a binding agreement between Venezuela and the blockading powers that an adequate security should be provided for the prompt payment of the claims, then no other treaty or contract subsequently concluded between Venezuela and the other powers (interfering with or colliding with the former agreement) can have any force or validity. On this point I desire, with your permission, to cite a well-known passage from Vattel's Law of Nations:

If there be a collision between two treaties made with two different powers, the more ancient claims the preference, for no engagement of a contrary tenor could be contracted in the subsequent treaty; and if this latter be found in any case incompatible with that of more ancient date, its execution is considered as impossible, because the person promising had not the power of acting contrary to his antecedent engagements.

The same passage is to be found in Woolsey's well-known work on International Law, at section 109, but I will not weary the court by reading the passage itself. For all these reasons I most confidently submit to the court whether I have not proved that the blockading powers and the nonblockading powers are not, and were not, in the same position, and therefore whatever meaning you may give to the maxim "equality is equity," it has no application to the present case.

In the third place (and this is my last argument on this point), the maxim "equality is equity" is a well-known maxim in civil and municipal law, and especially in equity jurisprudence. I need scarcely remind the eminent jurists whom I have now the honor of addressing that it is well known in all systems of equity jurisprudence, and has been explained in various works. I will cite the names of two works, but will read a passage only from one. In that work, of which Great Britain may well be proud, because it has become a classical work among jurists of every nation—in Maine's Ancient Law, the maxim "equality is equity," is explained from a historical point of view at page 59. I will not cite that passage, as the time of the court is, I know, very precious, because the passage treats the question more from a historical than from a practical point of view; but I do desire to cite, with your permission, a passage from Storey's Equity Jurisprudence, paragraph 64, letter F. He says this:

Another maxim of general use is that equality is equity; or, as it is sometimes expressed, equity deliighteth in equality.

Then he cites an old legal passage from one of our oldest writers, Bracton, and goes on to say:

This maxim is variously applied—as, for example, to cases of contributions between coal contractors, sureties, and others, etc.

I will just give two illustrations to show how that maxim has been applied in English jurisprudence and in American jurisprudence. Take the case of lands purchased for a partnership consisting of two

persons out of partnership funds and those lands conveyed to the two partners. Then, according to the strict rules of English common law, on the death of one partner the lands would go entirely to the other partner—that would be so according to the rigid common law. But, inasmuch as the price was paid by the two partners, equity steps in and equity says, “No; inasmuch as you, the surviving partner, did not pay the whole of the price but really only one-half of it, the lands must now be divided equally between you and the estate of the deceased partner.” Let me secondly take the case of two sureties—two sureties are liable for the same debt, one surety pays the whole of it. Equity steps in and overrides the rigid rules of the common law. Equity says, “Inasmuch as one surety has paid the whole of the debt for which he and the other was liable, the latter must contribute his half toward the payment of the two.” In other words, as appears from many celebrated judgments known all over the world, and cited I believe in every country of the world, from the maxim “Equality is equity” flows the subsidiary maxim, *Qui sentit commodum sentire debet et onus*.

Let me now apply (and this is the last stage of my argument) that maxim to the present case. Have not the other creditor powers enjoyed a *commodum*? Why, they would not be here if they did not think they had. Let me now present this dilemma to my learned opponents. This fund was undoubtedly produced by the warlike measures taken by the blockading powers. That fund was either procured as an assignment for the benefit of the blockading powers alone, or for the benefit to the blockading powers and the other powers. This is an irrefutable unavoidable dilemma. Well, if it was obtained for the benefit of the blockading powers alone *cadit quæstio*. Then, of course, the blockading powers are in the right. If, on the other hand, it was obtained, as is alleged on the other side, jointly for the benefit of the blockading powers and the nonblockading powers, then the nonblockading powers have enjoyed a *commodum*, and a *commodum* for which alone they are now fighting the present case—namely, to share *pari passu* with us the benefit of the security which we have obtained. But if they claim the *commodum* they must be made to feel the *onus*, and they refuse to do so. So that that maxim, so often cited by my opponents, tells conclusively, I submit, in my favor, and that it is impossible to allow the other creditor powers to share *pari passu* with the blockading powers, because they have not offered to share the serious risk and the great expenses which were incurred in procuring the fund of which they wish to claim the benefit on the present occasion.

Before I conclude I wish to make one, and only one, other observation, and it is this: M. Clunet, toward the end of his brilliant speech, narrated, in language the neatness and the wit of which were charac-



teristic of the nation of which he is so distinguished an ornament, the charming story of the snatched watch, which story, however, alas, was yesterday by a few words demolished by my learned friend, the attorney-general. But then M. Clunet, like a great orator, like a great rhetorician, passed from the light style to the grave style, and turning around toward us, the blockading powers, he appealed to us in impassioned terms to the following effect. He said:

Why did you blockading powers so entirely lose sight of the blessed doctrines laid down by the peace conference? Why did you not remember that that memorable conference and the convention to which it gave birth presented mediation and arbitration as the proper means of securing peace?

And so thrilling were the terms with which my learned friend threatened us, the poor blockading powers, that the very sound of his eloquence lingers still in my ears. But allow me now in my turn to address a few words to his clients and their associates—to Venezuela. Why did Venezuela refuse the offer expressly made by Germany to arbitrate? Why did Venezuela decline the offer made, as I have shown, by Lord Lansdowne at an early period to refer all the disputes to a mixed commission? And now I address the other so-called peace powers. Why did you not object to the measures which we took, and which you knew all along we were taking? Why did you not remember those celebrated articles from I to XIV of The Hague Convention, in which the powers are recommended and are advised to have recourse to mediation and arbitration? Why did you not recollect those blessed doctrines? Why did you not ask us to mediate or to get some power to mediate? And why did you not recommend us to go to The Hague? Ah, what did you do? You not only did not object, you acquiesced. You seemed to urge us on, your only warning being, "Don't touch our vested interests." This was your only warning; you kept silence. I will not say why, but you kept silence. In what way will an impartial tribunal, do you think, view this conduct? I am appealing to the so-called peace powers. It may have been prudent, it may have been clever, it may have been cunning; but do you think an impartial and high-minded tribunal will think the course you took generous, noble, or calculated to promote the true cause of peace? Mr. President, I stop not to discover or investigate the true answer to that question, for most assuredly the judgment of this court will not be founded on any such considerations. The judgment will be founded, as is prescribed by Article XV of The Hague Convention, on the juridical principles of law and equity, so that the high estimation in which this august tribunal is and ought to be held will be kept intact and unimpaired throughout the civilized world.

Mr. RICHARDS. I desire, sir, to avail myself of the permission of the court to address a few observations only by way of supplement



to those which have been addressed to you by my learned friends. They have stated the case on behalf of His Britannic Majesty so completely and so fully, both in regard to the facts and in regard to the propositions of law on which we rely, that it is unnecessary for me to follow them on the main grounds; but there is one matter to which I do desire to invite the attention of the tribunal, because I think it is a matter which is most material to consider in arriving at a decision of the question at issue.

The matter, sir, to which I intend to confine myself entirely is the form of the question which has been referred to you and the circumstances under which that question arose. I desire to point out exactly how the controversy arose which has now been referred to you. And, sir, in the first place, I have to point out that the controversy—the question which is now referred to you—has arisen solely between Venezuela and the blockading powers. The other creditor powers, sir, who are represented here so numerous to-day, and who urge so strongly the proposition of law that they have a right to share in the security, took no part in the negotiations until after the protocols between Venezuela and Great Britain were signed. They made no remonstrances except those which have been mentioned. France made a remonstrance confined to the diplomatic debt; Belgium made a remonstrance confined to the 10.8 per cent on which the Caracas Water Company has a security. My learned friend has pointed out to you, sir, that those securities are not affected by the present charge. The United States, sir, made no reservation except in the event of territory being occupied, and no territory has been occupied. The United States, sir, assented to the action of the blockading powers, and I desire on this point to call your attention to this fact—that the United States not only assented, but that the United States Government was the medium of communication between Venezuela and the blockading powers until a late date in the negotiations which passed between Venezuela and the blockading powers.

The members of the court will have observed, I doubt not, that during all the earlier negotiations the communications between Venezuela and the blockading powers were not direct, but passed through the medium of the United States Government. The United States Government, therefore, were fully aware of the demands of the blockading powers from the first; they furthered those demands; they transmitted those demands to Venezuela; they knew that those demands included a demand for security for the blockading powers alone; they were well aware of that. That is contained in the memorandum of the 23d December, which was read to you yesterday, and which, I think, you will find was forwarded, through Mr. White, the chargé d'affaires of the United States in London, to the President

of Venezuela. Therefore, sir, we have one power, the United States, who expressly assented to our action by allowing herself to be the medium by which these communications were forwarded. And we have two other powers who did not expressly assent, but who confined their reservations to two particular points, and therefore impliedly assented.

Now, sir, we have heard since we came here that there is a doctrine in international law that all creditors of a State are entitled to share equally, and that no security can be obtained by force. It will be interesting, sir, to hear when that doctrine originated, and when the researches of my friends opposite first enabled them to come across that doctrine. It certainly was not known to the other creditor powers before the protocol was signed, otherwise they would surely have remonstrated. My learned friend—if I may call him so—who represents Belgium has told us that his conscience revolts against the idea of a security being obtained by force. Well, I sympathize with my learned friend, but his conscience is somewhat tardy. It might have revolted when he heard of these proceedings in December, but it slumbered. It slumbered in December; it slumbered through January; it slumbered through February; and it is only now, when it becomes apparent that the blockading powers have obtained some actual results from their action, that that conscience awakes and revolts.

It is unnecessary, therefore, for the particular point to which I respectfully invite your attention to consider any of the dealings with the other creditor powers. They had no act or part in the negotiations between Great Britain and the other blockading powers and Venezuela; and, therefore, sir, to find out what the exact controversy is at this moment I first invite your attention to the protocol which was signed on the 13th February between Great Britain and Venezuela. It is certain that nothing that happened with the other creditor powers can vary the terms of that protocol. That protocol is the document from which this court derives its jurisdiction. It provides for a submission of the question in dispute to this court, and this court can not go beyond the terms of that protocol. And, sir, I call your attention to this protocol for this reason: This protocol provides for the satisfaction of the claims of the blockading powers; it provides for the very assignment which is now under discussion; it provides for the assignment of the 30 per cent of these customs revenue which are now under discussion. But what is the consideration for that assignment? And it is to this point, sir, that I invite the attention of the tribunal. The consideration of that assignment is the raising of the blockade and the restoration of the vessels. It is impossible, sir, to look at this document of the 13th February without

seeing that these assignments were obtained in consideration of the raising of the blockade and the restoration of the vessels. You will find that, sir, in article 7 and article 8, and I venture to call attention to that for this reason—that it has been contended here that this is a case of voluntary assignment. I venture to think, sir, that no one looking at the facts, quite apart from the terms of the protocol, could come to the conclusion that this was a voluntary assignment. But I go further, and I say that this document under which a reference to this court took place proves that it is not a voluntary assignment. It proves that it is an assignment in consideration of the raising of the blockade and the restoration of the vessels. The other creditor powers, sir, can not go behind this document. They are bound by it, and I submit to you that they are therefore bound by the position that this assignment was obtained by the raising of the blockade and the restoration of the vessels.

And now, sir, you will see that the question which Venezuela and Great Britain desired to refer to this court is the question mentioned in article 5 of the protocol. It is the question as to the rights of Great Britain, and Germany, and Italy, to a separate settlement of their claims. Now, sir, that imports a controversy existing between Great Britain, Germany, and Italy on the one side, and Venezuela on the other as to the right of the blockading powers, namely, Great Britain, Germany, and Italy, to a separate settlement of their claims, and I will, with your permission, call attention to five documents only, I think, which show how that exact controversy arose and what that exact controversy was. And, particularly, I desire to point out to the tribunal exactly when this claim of the other creditor powers to intervene was first introduced, because I think that is material to understanding the controversy between the parties. The documents, sir, are known to you, but those I refer to are short, and I will call attention to the material passages in them. I can give the references to the British Blue Book and the Venezuela appendix, but they are set out consecutively in the British counter case, and perhaps it may be convenient to follow them there.

The first document to which I desire to call attention is in the British counter case at page 13; it is also in the Venezuelan appendix, page 152.

Now, sir, I call attention to this document because it is the first document in the negotiations with Mr. Bowen. That document has been read to you. It confers on Mr. Bowen the power “to settle the present difficulty which has arisen with the United Kingdom of Great Britain, the German Empire, and the Kingdom of Italy.” It is confined to those three powers. Therefore, sir, at the first stage—I want to make that good—at the first stage of the negotiations the whole controversy is confined to the three blockading powers. There has

been some question about the communication of that document, but that document was actually sent to Lord Lansdowne by Mr. White, and Lord Lansdowne acknowledges it on the 19th December, which you will find in the British Blue Book, No. 207.

Now, sir, the next communication is on the 20th December; it is a letter from Mr. Bowen to Mr. Hay, the United States Secretary of State. That, sir, is in the Venezuelan appendix, page 153, or in the British counter case, page 14; and I call attention to that, sir, for this reason, that it shows that Mr. Bowen was at that time considering only the claims of the "allied powers," as he calls them, of the blockading powers.

I read a message in the middle—I need not trouble the tribunal by reading it all—but the court will see that in the middle it is stated: "Mr. Bowen believes that Venezuela would be satisfied to pay a good sum in cash at once to the three powers, and would agree that a mixed commission should settle the amounts to be paid on claims, and that Venezuela would furnish ample guarantee," and so on. And "It is better to accept at once, and in full, the ultimatum of the three powers than to leave the matter to the tribunal at The Hague." So there, again, up to the 20th December, there is no mention of rights of any other powers, but the proposals for settlement are confined to the three blockading powers.

I pass on, sir, to the telegram from President Castro of the 1st January, which is in the British Blue Book, No. 215, or is in the British counter case, page 17. I am calling attention only to documents which I think are material on this point. The point I am making on that again is that it relates only to the claims of the allied powers.

I recognize in principle the claims which the allied powers have presented to Venezuela. They would already have been settled if it had not been for the civil war requiring all the attention and all the resources of the Government. To-day the Government bows to superior force, and desires to send Mr. Bowen to Washington at once to confer there with the representatives of the powers that have claims against Venezuela, in order to arrange either an immediate settlement of all the claims or the preliminaries for a reference to the tribunal of The Hague, or to an American Republic to be selected by the allied powers and by the Government of Venezuela.

Now, sir, I am aware, and I desire to treat everything in this document, that that communication gives Mr. Bowen an authority to confer "with the representatives of the powers that have claims against Venezuela." But, sir, if you read the whole document you will see that it is in effect confined to the blockading powers, because it deals at the top with the blockading powers, and an arbitrator is to be selected, at the bottom, by the allied powers.

Let me now, sir, call your attention to the next document—that is from Mr. Bowen to Mr. Hay on the 6th January, and that is to be

found in the Venezuelan appendix at page 159. Now, this conveys Mr. Bowen's views on the 6th January of the controversy. I will not read the first passage, for it is not material, but in the second sentence he reports "that President Castro has done all in his power to come to a fair agreement with the allied powers; that he has been ready and anxious to settle his cotroversy with them; that it is believed that if he could send a representative to Washington to confer with the diplomatic representatives there of the allied powers his representative could convince them that the terms he has to offer are reasonable." And then it goes on, "but since the allied powers have declared he must yield at once to their demands, he feels that he is obliged to bow to superior force." Therefore, that, sir, again shows that the whole matter then was a matter between the blockading powers—who were putting pressure on Venezuela—and Venezuela, and not with any other powers at all.

Now, sir, on the next day, the 7th January, a communication was sent from President Castro, and we received it on the 9th January. It is No. 228 in the British Blue Book, or is on page 19 of the British counter case. There President Castro says:

The Venezuelan Government accepts the conditions of Great Britain and Germany, and requests you to go immediately to Washington for the purpose of conferring there with the diplomatic representatives of Great Britain, Germany, and with the diplomatic representatives of the other nations that have claims against Venezuela, and to arrange either an immediate settlement of said claims or the preliminaries for submitting them to arbitration. (Confidential.)

This is the postscript: "If, as I understand, Great Britain and Germany want to know what guaranty they will have, please inform them that it will be the custom-houses." Then, again, sir, it is quite true there are some words introduced which show that Mr. Bowen might have made arrangements with other powers, but there are no words introduced either in this document or in any other document at this time to show that the settlement which was to be made with the blockading powers was in any way at all to be affected by any claims, by any arrangements, that might be made with other powers; there is no suggestion of this point that is now raised that the rights of other powers could in any way affect the claims of the blockading powers. And may I enforce that, sir, by calling your attention to the effect of the postscript: "If, as I understand, Great Britain and Germany want to know what guaranty they will have, please inform them that it will be the custom-houses." What a misleading offer that would have been if it was intended that the other creditor powers should be allowed to admit their claims against this very security? The effect of that would be that the security would become absolutely valueless. It is quite clear that that was not the proposition that was put forward. Supposing the blockading powers had



accepted that position and raised the blockade—supposing they had accepted the offer in that postscript and raised the blockade at once—could anybody, could any fair-minded person have contended that the security offered there was the security of the custom-houses, but a security subject to the claims of other powers so that in fact it became no security at all? It is impossible, sir, to suppose that that document means that other claims are to be admitted.

That, sir, brings the matter up to the time of Mr. Bowen's arrival at Washington, and to the negotiations which took place on the 23d January. I think I have demonstrated that up to that time there had been no suggestion whatever that the rights of the blockading powers were effected by any claims of other creditor powers. Now, what happens on the 23d January? It will be remembered that, before that date, Mr. Bowen had requested that the blockade should be raised, and that His Majesty's Government had declined to raise the blockade except on terms, one of which was the term that adequate security should be provided. His Majesty's Government had declined to raise the blockade except on the terms which were stated in Sir Michael Herbert's letter to Mr. Bowen of the 23d January, which is to be found in the Venezuelan appendix, page 163. And sir, the answer of Mr. Bowen has been read to you. It is in the Venezuelan appendix at page 164, and it is in the British counter case at page 26. It is, sir, an unconditional acceptance of those terms. It is dated the 23d January, 1903:

In answer to your letter of to-day, stating the conditions on which Great Britain will raise the blockade of the Venezuelan ports, I have the honor to inform you that I accept those conditions, as they are essentially the same as those already accepted by the Venezuelan Government.

I pause here, sir, to say that the acceptance of those conditions involved the acceptance of the condition that adequate security should be given for prompt payment. If any suggestion had been made that that acceptance of the British offer was subject to the rights of the other powers, why is it not upon this document? Why is there no mention of it in this document? If the acceptance of the British offer was to be subject, and entirely subject, to such rights as the other creditor powers might advance (and the amounts of the claims were not then known), why is it not in this document? The document forms a contract. Who would, unconditionally, accept a proposal of that sort, if really between the parties there was this reserve to be made—a reserve which, in fact, nullifies the whole acceptance? I think, sir, it is incredible to suppose that anybody at that time thought that the rights of other creditor powers were to come between Venezuela and the blockading powers. I therefore submit, sir, that up to the time of the signing of that document, which I have last



read, there had been no intimation, no suggestion, that the rights of the blockading powers were to be subject to any possible infinite claims of other creditor powers.

But now the difficulty arises. On the same day, sir, Mr. Bowen, in fulfillment, or apparent fulfillment, of that acceptance, states the security which he is willing to give. That, sir, appears in the Venezuelan appendix, page 163. If you look at the terms of that document, sir, I think you will say that they are unfortunately ambiguous. Read by a man who had not heard of this question of the claims of the other creditor powers, they might not arouse suspicion; read by a man who knew that he meant to introduce the claims of the other creditor powers, they are wide enough in terms to cover it. I think, sir, you will see that the phrases are all vague, and that anybody reading this document and having in his mind only the controversy between the blockading powers and Venezuela, would not necessarily see that anything more was intended. But if you are aware that another point is to be raised, you see that the words are wide enough to cover it. That document, I repeat, was, unfortunately, ambiguous—unintentionally, I have no doubt, ambiguous—but it was ambiguous.

M. DE MARTENS. You are speaking of the document which begins with the words "Statement left in the hands?" There are three documents on the same page.

Mr. RICHARDS. I beg your pardon, sir, I was not aware of it; I was reading from a note. It is headed "Statement left in the hands of Sir Michael Herbert." I have confined myself, sir, to the material documents, and I think I have shown that, previous to this document, no suggestion had been made to His Majesty's Government that any offer made to them by Venezuela was to be subject to other rights. But now the question is raised for the first time.

Now, I do not propose to ask you, sir, to consider again the negotiations which passed immediately after this with His Majesty's Government. I can refer to them if it would assist the court; but the general effect is this—this offer is sent home. Lord Lansdowne says, on seeing it: "What does he mean? Does he mean that this amount is to be paid to the blockading powers only, or to the blockading powers and" (as the words are) "all the creditor nations?"

He is in doubt as to the proposal, and the matter is referred back by Lord Lansdowne to Sir Michael Herbert, who asks the question. And then, sir, Mr. Bowen makes it clear that his offer is intended to apply to all the creditor nations.

Now, sir, we have it. Now the proposition is out for the first time. There, after this, in the few days that elapsed after the 23d January, it for the first time, becomes apparent that some question is to be raised

as to the other creditor powers. First at that date Lord Lansdowne says:

Tell me the amounts. I have no objection to your settling with the other creditor nations. I have no objection to your dealing with them. I have no objection to your paying them out of this amount, subject to this: That the amount left for us is sufficient to provide adequate security for the prompt settlement of our claims. Is sufficient to do what you unconditionally accepted a few days ago to do—on the 23d January—to provide adequate security for our claims.

Then, when the figures are gone into, it appears that the amount is not sufficient, even on the figures as then known. As they are known now the amount is still less sufficient, because the amount of the returns from the customs receipts were estimated more highly than, in fact, they are, so far as we know from the payments which have been made to the British bank agent at Caracas during the last few months. Therefore, it was pointed out by Lord Lansdowne that the blockading powers must have priority of settlement.

Now, sir, we have got to the origin of this controversy, and we have got to the point where this controversy is crystallized, and at which it takes a definite form; and, therefore, sir, I call your attention to two letters, and two letters only, of Mr. Bowen, which, I think, state the legal proposition which he put forward at that time; and I call attention to that because, as I say, the other creditor nations are bound by what Mr. Bowen did. They can not be in a better position than Venezuela. They have to come in under the same question that is submitted by Venezuela to this tribunal—and, therefore, it is important to see the ground on which, and the particular form in which, the question is submitted to this high tribunal.

Now, sir, the two documents (they are very short ones) are two letters from Mr. Bowen. The first is in the Venezuelan appendix, page 167, or in the British counter case, page 29. It is a letter from Mr. Bowen to Sir Michael Herbert, dated the 27th January, 1903. Now this is the legal objection, and this is the controversy as I understand it, between Venezuela and the blockading powers. "Dear Sir Michael,"—(this is from Mr. Bowen) "Please do not fail to state in your telegrams that I can not consent to give preferential treatment to the allied powers because, if the matters were referred to The Hague, all the creditor nations would be put on the same footing." There is a legal proposition, sir, a proposition, as I understand, of international law, because it is said that that would be the law laid down by the highest court of international law—the court I have the honor of addressing. Therefore, sir, that is a legal proposition.

Now, what was the position at this time? The blockade was continuing; the Venezuelan navy, such as it was, had been seized; there

were 40 or 50 Venezuelan merchant ships in the hands of the British or the Germans as prizes. Venezuela was under very great pressure; she had to satisfy the blockading powers to get rid of this blockade. The position, therefore, is this: The blockade is still existing at this moment when this letter is written, and Mr. Bowen's proposition is that if the matter were referred to the tribunal of The Hague all the creditor nations would be put on the same footing. The proposition, therefore, is that one nation can not by force obtain a security, and has no right to obtain a security by force.

Now let us see how it is stated in the next letter on the 2d February, where the proposition is restated. This is in the Venezuelan appendix, page 168, dated 2d February, 1903. Mr. Bowen begins by referring to a proposal for settlement which has been made—I do not think I need trouble the tribunal about that; but then he goes on, “I can not accept, even in principle, that preferential treatment can be rightly obtained by blockades and bombardments.” There is the Venezuelan proposition of law. “It would be absolutely offensive to modern civilization to recognize that principle and to incorporate it into the law of nations.” The proposition is that, according to international law, no separate treatment, no separate security, can be obtained by force. And then he goes on to say: “Now as the question of preferential treatment is the only one on which we have not agreed, I hereby propose that we leave that question to The Hague.”

I need not refer to any other document because that proposition was accepted by Lord Lansdowne and accepted by the other blockading powers, and the reference to The Hague was then drawn up. That is the question which is referred to The Hague; and that is the question which, as I submit, is the question referred to in article 5 of the British protocol, when it says that the question to be referred to this court is the right of the blockading powers to a separate settlement of their claims. They all along had contended for a separate settlement of their claims. No suggestion had been made that a separate settlement of their claims would not be made with them, until these letters after the 23d January; and then the proposition is put forward that preferential treatment can not be obtained by blockades, and, therefore, because international law does not recognize that preferential treatment or security can be obtained by blockades, Venezuela can not fulfill the engagement which a few days before she had unconditionally accepted, to provide sufficient security for the blockading powers.

That, sir, as I submit, is the controversy which is referred to in article 5 of the British protocol, as the controversy before this court. It is a controversy, sir, which was never raised by President Castro; it has never been raised by the United States, although they had charge of these negotiations at the first, and were aware of them

throughout, for they were conducted by their own minister at Caracas; it was never raised by any of the other creditor powers at all. They have come in, hanging onto the coat tails of Mr. Bowen. They have come in now to support this point; but I submit that they must be limited to the controversy which he raised. They must be limited to this proposition, which Mr. Bowen has started, as to the reason why he can not fulfil his agreement. That proposition is that international law does not permit the obtaining of security by force.

My learned friend the attorney-general has dealt with that proposition, sir; I do not intend to occupy the time of the tribunal by dealing with it further. I will only say this: Force is a recognized source of title in international law; treaties obtained by force are not invalid—indeed, if that were so, the greater part of the history of the world would have to be reopened. I think I have read somewhere, sir, and perhaps at their leisure the learned counsel for the United States would verify my recollection, that a treaty of independence has been at least in one instance obtained by force. But I never heard, sir, that treaties of that kind are invalid because they were obtained by force. Force is a procedure recognized by international law, and force affords a good title. It has always been so as long as international law has existed. But, sir, what has never been a doctrine of international law, and what I venture to think has never before been put forward before a tribunal of arbitration, is that those who have declined to take part in measures of force, that those who have expressly said that they would not take measures of force, that those people when they find that the measures of force are successful, may claim to come in and share the results on equal terms with those who have borne the burden and heat of the day. That, sir, is a proposition which I venture to think has never formed part of international law, and I respectfully submit, and this is the last observation I have to address to this tribunal, that that doctrine should never form part of the law of nations.

## OPENING ARGUMENT OF WILLIAM L. PENFIELD ON BEHALF OF THE UNITED STATES.

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MEETING OF NOVEMBER 9 AND 10.

MR. PRESIDENT AND GENTLEMEN OF THE TRIBUNAL: In resuming its sittings on November 4, the tribunal, by its president, very properly called our attention to the necessity of observing, in the discussion, the general conditions stipulated in the protocols of May 7, and in particular of the necessity of discussing the question stated in the first article of the treaty. Let me, then, state some questions which are and some questions which are not involved in the issues between the peace powers and the allies.

First. This litigation consists in a conflict between states which can not be determined except upon principles of international law and international treaties. It was so decided in the Pious Fund case. Therefore, I shall not enter into any discussion of principles of municipal law.

Second. The question of the costs and the expenses incurred by the allies can not be considered. That question has been settled by the parties in their negotiations, and has not been submitted to the tribunal in any form.

Third. Whether a war is just or not is a legitimate subject of discussion between belligerents, and that subject has been discussed by Mr. MacVeagh for Venezuela, and by the British counsel for their Government. Public war is a legal status, and the United States Government has never asserted, and does not now assert, that the war against Venezuela was either just or unjust. Its attitude has always been, and still is, indifferent and neutral, in fact; and indifferent and neutral, as regards the expression of any opinion. Therefore I shall dismiss from further notice the argument of the British counsel on this topic.

Fourth. In the protocols of February 13 Venezuela acknowledged the legal justice of the first-rank claims of the allies. I shall not, therefore, discuss the justice of those claims; but this does not prevent the consideration of the claims which have been recognized or paid without revision. This is not in order to show that they are unjust, but in order to show, as bearing on the question of preferen-

tial treatment, the benefits and advantages which the allies have already obtained. For they have already obtained valuable preferential treatment, although they argue the case on the erroneous assumption that they have not done so.

Fifth. We do not object to the separate treatment or payment of the claims of the allies out of the revenues assigned for that purpose, provided that treatment is equal and equitable, so that all proper claims of all the creditor states shall be paid ratably and *pari passu*.

Sixth. Consequently under the protocols of May 7 there is only one important question submitted—the question of preferential treatment. So far as the United States Government is concerned the other questions submitted to the tribunal will be left to its equitable decision without discussion.

Seventh. The question of the adequacy of the security given by Venezuela for the payment of the claims is not submitted to the court by the protocols; it is only by inference and by argument that the protocols can be interpreted as submitting the question. But this has been the subject of so much discussion that I shall consider it on its merits in order to meet the arguments of our honorable opponents and to show that they have wholly failed to prove, by evidence, that the security is inadequate. They have accepted the security and must prove that it is inadequate, even on their own basis.

Eighth. I shall deal chiefly with the questions of separate and preferential treatment—the former as incidental to the main question of preferential treatment—and I shall deal with all other questions simply as incidental to this issue. These two questions will, however, be discussed separately, because the question of preferential treatment was first submitted by the protocols of May 7, although the blockade was raised and the war was ended immediately upon the signing of the protocols of February 13.

I refer now to the documents in the British Blue Book, page 160, Nos. 160 and 161, of December 1 and 2, 1902. I am discussing now, as bearing on the main issue, the actual terms of the settlement agreed on. I call attention to the third paragraph of No. 161, from the Marquis of Lansdowne to Mr. Haggard:

You will request the Venezuelan Government to make a declaration that they recognize in principle the justice of these claims; that they will at once pay compensation in the shipping cases and in the cases where British subjects have been falsely imprisoned or maltreated—

And this is what I call attention to—

and that as to other claims they will be prepared to accept the decisions of a mixed commission with regard to the amount and the security for payment to be given.

Thus, on December 2, the security to be given was to be left to the determination of the Mixed Commission.



I next call attention to the British Blue Book, page 179, Document No. 201, which deals with the subject of notice. That notice was given on December 18 by the Governments of the United States, Spain, and Belgium of their decision to claim most-favored-nation treatment. I refer to that as incidental to but connected with the main question. The next document is dated January 9, British Blue Book, page 194, No. 228, from Mr. White to the Marquis of Lansdowne, communicating a telegram to Mr. Secretary Hay from Mr. Bowen, in which it is stated by President Castro that—

The Venezuelan Government accepts the conditions of Great Britain and Germany, and requests you to go immediately to Washington for the purpose of conferring there with the diplomatic representatives of Great Britain and Germany, and with the diplomatic representatives of other nations that have claims against Venezuela, and to arrange either an immediate settlement of said claims or the preliminaries for submitting them to arbitration.

Now, there is nothing said there on the subject of guaranty, adequate security, or of separate or preferential treatment. The next document is dated January 7, in Mr. Bowen's counter case, page 1, giving his full powers, by which he is authorized to negotiate with all the creditor nations. The next is dated January 15, in the British Blue Book, page 216, No. 236. It begins on page 215, but I call attention to the fourth paragraph on page 216. This is from Lord Lansdowne to Sir F. Lascelles:

His excellency called my attention to the fact that President Castro's letter apparently contemplated that Mr. Bowen should confer not only with the representatives of Great Britain and Germany, but with those of all other nations having claims against Venezuela.

The next document is dated January 25, 1903, British Blue Book, page 218, No. 243—Sir Michael Herbert to the Marquis of Lansdowne:

Mr. Bowen has left with me a copy of his full powers, of which the following is a translation: "Venezuelan Government grant full powers to Mr. Herbert W. Bowen to concert in Washington with the diplomatic representatives of the nations who have claims against Venezuela for the immediate settlement of those claims."

And so forth. That is the second time that the attention of the British Government is called to Mr. Bowen's full powers to settle with all creditor nations. Lord Lansdowne's attention had been called to it on January 15; the telegram from General Castro is dated January 24, and was received on January 25 (Blue Book, p. 218, No. 243). In this connection I conceive that this question whether the full powers of Mr. Bowen, which he communicated to allies and all other creditor nations, or whether they were the other full powers to settle with the allies, which Mr. Bowen says he never

communicated, is most important. I read now Mr. Bowen's statement on that subject. It corresponds with the statement made openly in court by him the other day and I will show, by the references, that his statement is, in all substantial respects, absolutely true:

The first credentials given by the Venezuelan Government to Mr. Bowen referred solely to Germany, Great Britain, and Italy, because at the time they were given it was thought, as Mr. Bowen stated, that some settlement of the *Ban Righ* and "Patos" questions would have to be made. When, however, it was discovered that Great Britain did not include those questions in her plan of settlement, other credentials were given to Mr. Bowen, and it was those other credentials which were shown by him to all the representatives of the creditor nations at Washington and accepted by them. Thus, all the representatives had notice at the very beginning of the negotiations that Venezuela would settle the claims of all her creditors. As to the question of security, "adequate security" was promised by Venezuela to the blockading powers, and the peace powers were promised that they should have the same security as was given to the blockading powers. It was proposed by Venezuela that the said adequate security should consist of the 30 per cent of the customs of La Guaira and Puerto Cabello. That was all Venezuela could afford to pay. No objection to the 30 per cent was ever made by any of the creditor nations; more was never demanded. It was, therefore, considered to be adequate. The moment the claim for preferential treatment was made it was held by Venezuela to constitute a new claim and was rejected. Never did Venezuela agree to pay her debts within a fixed period. "How" and "how much," were the questions asked, and never "within what time will you pay." The adequacy of a security does not depend on the brevity of its duration, but on its stability and character. Venezuela understood that she must give as security something that would surely furnish the money. That was all that was required of her. Having given that security, all her creditors understood at once that their money was safe and would be paid. It was only an afterthought on the part of the blockading powers to insist that Venezuela should pay them first. They never asked to be paid first until Venezuela had accepted all their conditions. If they had made the demand for preferential treatment before then, it would have been refused and their conditions would not have been accepted. To demand preferential treatment was, therefore, to demand something after the matter had been settled. Nations, like individuals, must hold to their agreements, and their word should be as good as their bond. The blockading powers never understood that the whole 30 per cent would be given to them. They understood it would be paid to them and to the peace powers. They considered the 30 per cent adequate security, for they never asked to have it increased, and, on the contrary, they once proposed that a part of it should be given to them exclusively, thereby proving that they understood it was not all for them, and that they would consider well that part as adequate security.

In view of all these facts it is clear that Venezuela put aside all of her revenues that she could spare for the benefit of all her creditors, and that they would all be paid in due course of time. That is all that can be required of a debtor. That is all the peace powers require of Venezuela, and that is all that the blockading powers should require of her.

I am reading this document for the purpose of stating a proposition of fact. I now refer, in order to substantiate the accuracy of

the proposition, to documents dated December 19, which are to be found in the British Blue Book, page 180, Nos. 203 and 204. I first refer to No. 203, dated December 19, from Mr. White to the Marquis of Lansdowne:

My LORD: I have the honor to inform your lordship that Mr. Bowen, the American minister to Venezuela, has informed my Government by telegraph that the Venezuelan Government has conferred upon him full powers to enter into negotiations on the part of Venezuela to settle the present difficulties with Great Britain, Germany, and Italy. I am instructed by Mr. Secretary Hay to communicate the Venezuelan proposition to your lordship, and to ascertain whether His Majesty's Government be disposed to assent thereto.

With the permission of the tribunal, and as incidental to the discussion of the principal issue, I wish to comment for one moment on this note. Our opponents contend that these full powers were communicated to the allies. They dwelt with much emphasis on that assertion in their argument. I will prove by the record the error of that conception and show that these powers never were communicated, and, secondly, that if you take the statement contained in this note to mean that Venezuela had conferred upon Mr. Bowen full powers to enter into negotiations only with Great Britain, Germany, and Italy, it would be a misleading proposition. When a plenipotentiary is authorized to negotiate with several different states, a telegraphic communication or a diplomatic note may be sent by that representative to each one of the different states, saying that he is authorized to settle with the particular state, and this is the full length to which this telegram goes. This particularly concerned Venezuela, Great Britain, Germany, and Italy, but it contained no intimation that Mr. Bowen did not or might not have other powers under which he would conduct the negotiations. This communication was answered by the Marquis of Lansdowne in the same sense in which the communication itself was made.

I next call attention to a note, page 194 of the British Blue Book, No. 228, from Mr. White to the Marquis of Lansdowne, received January 9, by which, on January 9, the British secretary of state is advised of the precise nature of those powers. Up to that moment—that is to say, up to the time when Mr. Bowen's full powers were mentioned in the note which I have just given—Mr. Bowen had not arrived in the United States. I now cite the Venezuelan appendix, page 163, a telegram dated January 19, from Mr. Bowen to Mr. Hay:

CHARLESTON, S. C., *January 19, 1903.*

Have just landed. Shall arrive Arlington Hotel, Washington, to-morrow morning.

That document shows, inferentially, that Mr. Bowen did not arrive in Washington until January 20. I now refer to the British

Blue Book, page 218, No. 243, from Sir Michael Herbert to the Marquis of Lansdowne, received January 25:

[Telegraphic.]

WASHINGTON, *January 24, 1903.*

Venezuela. Mr. Bowen has left with me a copy of his full powers, of which the following is a translation:

He then communicated his full powers to settle with all creditor states, so that they were in the hands of the representatives of the allies on January 24, and those full powers were communicated by Sir Michael Herbert to the Marquis of Lansdowne and received by him on the 25th. Now, if the other full powers had ever been communicated to the allies, why did they not print them in the Blue Book? The full powers to negotiate with all of the representatives were communicated to the British ambassador and were printed in their Blue Book, and Mr. Bowen says that these were the only powers ever communicated by him to them. And these documents corroborate his statement; the dates show that he is right, and the evidence shows, incidently, that he is right, because if they had received the other powers they would also have appeared in the Blue Book. Therefore, from the documents themselves, one important fact—and, as I think, the pivotal fact—in this case is settled. The fact is that by these full powers Mr. Bowen was authorized to negotiate with all the creditor states. The allies accepted these powers and entered into negotiations in accordance with them, and they are precluded now from disputing the legitimacy of those negotiations, because all of the arrangements based upon those full powers, and all the arrangements which they assented to in accordance with those full powers, are binding upon them. This, as I said, is introduced, however, as ancillary to the discussion of the main question—the question of preferential treatment—and the documents which I have already cited show that, as far as those documents go, there had been no word said about guaranty, adequate security, or separate or preferential treatment. But the conditions as to the security were imposed by Germany on December 18 and 22. I refer to the British Blue Book, page 177, No. 199, the Marquis of Lansdowne to Sir F. Lascelles:

FOREIGN OFFICE, *December 18, 1902.*

The German ambassador informed me to-day that the German Government is in entire agreement with us as to the manner in which the Venezuelan proposals for arbitration should be treated.

Without reading the whole dispatch, I invite the particular attention of the tribunal to the last two lines on the bottom of page 177, in that No. 199:

In case the latter should be unable to meet these demands immediately, reliable guaranties must at least be given for a speedy payment.

The subject was then introduced, "Reliable guaranties for a speedy payment." I refer next to the British Blue Book, page 181, No. 207, and without reading the whole dispatch I invite particular attention to the first three lines of the third paragraph on page 182. This is the German proposition:

The arbitrator will have to decide both about the intrinsic justification of each separate claim and about the manner in which they are to be satisfied and guaranteed.

That is the language—the arbitrator will decide "about the manner in which they are to be satisfied and guaranteed."

I next call attention to the British Blue Book, page 183, No. 209, and I call attention to the last paragraph on page 183. This is the British proposition:

It would, in the opinion of both Governments, be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but—

These are the important words—

should also define the security to be given by the Venezuelan Government and the means to be resorted to.

I call attention particularly to these terms, and their force will be seen, I think, further on in the course of the argument.

I now call attention to the final terms demanded by Great Britain and Italy, which were the same—January 23, Venezuelan appendix, page 163. I call attention, now, to the paragraph which is numbered 2 on the top of page 164:

The other claims for compensation—

And so forth—

must be met by an immediate payment to His Majesty's Government or by a guaranty adequate to secure them.

So the language reappears in a little different form. In some of these documents the language is that "the tribunal must examine." Here the language is that the claims must be paid immediately or secured by a guaranty of adequate security. At page 166 I next call attention to an additional document presented by Count Quadt on January 24, 1903. Count Quadt demands in the first sentence of that document:

The conditions of the German Government having been accepted, Mr. Bowen as representative of the Venezuelan Government will now have to provide at once for the payment—

And so forth—

or give an adequate guaranty for this amount.

Now, I call attention to page 165—I should have called attention to that first—paragraph 3:

The said commission will have to decide both about the fact whether said claims are materially founded and about the manner in which they will have to be settled or which [what] guaranty will have to be offered for their settlement.

I now call attention to Mr. Bowen's acceptance on January 27, page 167 of the Venezuelan appendix. I simply call attention to it without reading it, as you are familiar with it.

Then the question of preferential treatment arose, and that was dealt with by Mr. Bowen; and then the question of the proposed compromise arose on February 22, Venezuelan appendix, page 168. I will read from the bottom of the page:

*Mr. Bowen to Sir Michael Herbert.*

WASHINGTON, February 2, 1903.

DEAR SIR MICHAEL: I have given due consideration to your Government's proposition that two-thirds of the 30 per cent of the customs receipts of La Guaira and Puerto Cabello be given to the allied powers.

That shows two things—that the allies understood the nature of the powers with which Mr. Bowen was clothed and also that they perfectly understood that the assignment was made to all the powers, and therefore they were proposing to take 20 per cent. I again call attention to the Venezuelan appendix, pages 169 and 170, as bearing on this question of preferential treatment. Again, the allies, after the signing of the protocols of February 13, demanded further concessions by the making of further protocols, on May 7, for the creation of mixed claims commissions. I call attention to the Venezuelan appendix to show the concessions that were demanded and were granted; in the third and fourth paragraphs on page 182 and the second paragraph on page 183 those additional concessions are given. That is to say, the allies had made these protocols of February 13 for the creation of mixed claims commissions, but had failed to stipulate in what medium or currency the awards should be paid. That was, of course, a very important stipulation lest they might be payable in depreciated currency; and after the United States and the other peace powers had obtained protocols for the creation of claims commissions and had obtained stipulations that the awards should be payable in gold, the allies made a similar demand and Venezuela granted the further concession, and their second set of protocols for the creation of a mixed claims commission were the same, *mutatis mutandis*, as the United States protocol; that appears on page 183.



Now, I desire to resume, after reference to these documents, the discussion which has been raised bearing upon them. Up to this time—that is to say, up to February 13—there was no stipulation for preferential treatment. After the protocols of February 13 were signed the blockade was ended and the controversy adjusted except as to two questions, which were reserved for the decision of this tribunal, namely, the questions of the distribution of the revenues and the separate payment of their share of it to the allies. The protocols are clear and unmistakable and there is nothing in them to construe. They do not contain the words “guaranty adequate to secure the claims.” The contract stated in the protocol is as follows. I am reading from the Venezuelan appendix, page 173, article 5:

The Venezuelan Government, being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in article 3 and similar claims preferred by other governments, undertakes to assign to the British Government, commencing the 1st day of March, 1903, for this purpose—

And so forth.

I desire to accentuate that the words “adequate guaranty” or “adequate security,” or other words of similar import, are not included in that article unless they are included in the mere expression of Venezuela’s willingness “to provide a sum.” The Italian protocol, on page 176, article 5, follows the British protocol. The German protocol, article 5, does not even contain the words “reasonable time.” I wish to call attention to the language of this article 5 of the German protocol in particular, page 180 of the Venezuelan appendix:

For the purpose of paying the claims specified in article 3, as well as similar claims preferred by other powers, the Venezuelan Government shall remit—

And so forth.

The acceptance of that protocol involved the acceptance by Germany of a simple agreement to remit the 30 per cent of the customs revenues. There is not in that article or in any other article of the German protocol a word about adequate security or guaranty. I call the attention of the honorable tribunal especially to this language; there is not even an undertaking that the revenues assigned shall pay within any prescribed period.

Now, then, we have the language of articles 5 of each of these three protocols. The language of the British and the Italian is the same. The language of the German protocol, article 5, is in this respect different from that of the other two allies, and is in all substantial respects the same as the protocols of the peace powers. The contract can not be altered and enlarged by reading into it the words “guaranty adequate to secure,” as you have been asked to do. These words were contained in the British ultimatum of January 23, which you will find in the Venezuelan appendix, page 164, at the top of the

page; and in the British Blue Book, page 213. This document (British Blue Book, pp. 209 to 213, No. 234) contains an instruction from the Marquis of Lansdowne to Sir Michael Herbert, and he says in the fourth paragraph on page 213:

The other claims, including those of the bondholders, will be referred to the tribunal on the conditions laid down in the memorandum of the 23d of December.

Now I refer to the conditions laid down in that memorandum, which will be found on page 183, at the bottom of the page, in the last paragraph. This is the memorandum communicated to Mr. White on December 23, 1902:

It would, in the opinion of both Governments, be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government.

That was a question to be left to the tribunal. Now, then, when our honorable opponents ask you to interpret the protocols of February 13 in the sense that they contain any guaranty as to the adequacy of the security, we answer and say that the tribunal has no more authority to bring forward those omitted words—omitted by the parties—the tribunal has no more authority, in a judicial sense I mean, to bring forward those words and introduce them into the protocols than you have to say that you yourselves shall settle the security by your decree and apportion it out of the revenues of Venezuela, out of the revenues of other custom-houses, out of internal revenues, out of excise taxes, out of taxes on lands. They may as well contend that the tribunal can change the language of the protocols of February 13 by incorporating one set of words which they have omitted as by incorporating another set of words which they have omitted. And so I emphasize my proposition that the protocols of February 13 do not contain a single stipulation that this security shall be adequate. Consequently, when they negotiated, when they accepted Mr. Bowen's full powers, when Mr. Bowen accepted every one of their terms and conditions and made the assignment exactly as they understood he was to settle all claims, and kept faith with the peace powers, it is not The Hague Tribunal that will upset a sacred arrangement like that.

So in the German ultimatum of January 24 these words were contained in article 3:

The said commission will have to decide both about the fact whether said claims are materially founded and about the manner in which they will have to be settled or what guaranty will have to be offered for their settlement.

But it is impossible for the tribunal to read these words into the protocols, because they have been omitted by the parties. The protocols must be taken as written, and the tribunal can not import into

the protocols words and terms and conditions that the parties themselves have omitted.

I refer now to the Venezuelan appendix, page 171. On February 14 the allies settled the question of that assignment, and they never can escape from their own interpretation of the protocols. I read it:

BRITISH EMBASSY.

We interpret our three protocols to mean that the 30 per cent referred to therein of the total income of the custom-houses of La Guaira and Puerto Cabello shall be delivered to the representative of the Bank of England at Caracas, and that the said 30 per cent is not assigned to any one power.

This "interpretation" was dated February 14, the day after the protocols were signed and two weeks after the assignment was made and three weeks after the allies had received the full powers, and they jointly agreed to an interpretation by which no one power is to have the benefit of this assignment. And that word "one" is taken in that broad sense of the term that the assignment is intended for all the creditor powers who are interested in it. Down to the 7th day of May there was no stipulation or provision in the protocols for preferential treatment.

I now refer again to the language of the protocols of February 13, and it is necessary to bear in mind that the terms and conditions of the British and the Italian protocols are substantially identical, but that they are substantially different from the terms and conditions of the German protocol, not on the question of adequate security, not on the question of guaranty, but simply on the question of reasonable time. Then, as I have been able to show by reading the documents—and with the very patient indulgence of the tribunal—the ultimatums of the allies had embraced several demands which Venezuela accepted; but they were changed in the protocols of February 13, and the meaning of those protocols is expressed in terms so clear and unmistakable that there can be no room for their interpretation in the sense attributed to them in this case by His Majesty's Government. The understanding of Lord Lansdowne can not override the plain meaning of the provisions of the protocol, which stipulates, article 5, not that Venezuela promises, not that Venezuela guarantees, but that—

The Venezuelan Government, being willing to provide a sum sufficient for the payment within a reasonable time of the claims specified in article 3 and similar claims preferred by other governments, undertakes to assign—

And so on. . There is nothing said either of guaranty or adequacy of security, or of the time within which the payments of the claims shall be made, and there is nothing said of an assignment exclusively to the benefit of the allies. The allies had been notified on December 14 and December 18 that there were other creditor states, and, in negotiating with Mr. Bowen on the basis of his full powers, they

assented to the assignment which was finally made to all the creditor states. If the allies had intended that the assignment should be to them exclusively they should have so stipulated. I wish again to emphasize the statement that the language of the German protocol is as follows:

For the purpose of paying the claims specified in article 3, as well as similar claims preferred by other powers, the Venezuelan Government shall remit—

And so forth. The German protocol is absolutely met by the terms of the assignment. The assignment is absolutely square with the terms of the German protocol, and the German protocol is absolutely square with the terms of the assignment. Germany and the peace powers, therefore, in respect of their contracts, stand on the same legal foundation before this court, and it is the contractual rights of the parties that the tribunal has to pass judgment on. Venezuela has literally kept her agreement with Germany.

The provisions of article 5 of the British and Italian protocols, as I have said, are identical. Now, what do they state, for the point is an important one, and will bear, I trust, with the patience of a much-tried tribunal, a little repetition? They state that—

The Venezuelan Government being willing to provide a sufficient sum for the payment within a reasonable time of the claims specified and similar claims preferred by other Governments, undertake to assign—

And so on. There is no guaranty in these protocols with Great Britain and Italy that the security is adequate for the payment of the claims within any prescribed period. There is merely an expression of Venezuela's willingness to provide a sum sufficient for the payment within a reasonable time, followed by her agreement to assign for the purpose of paying within a reasonable time. Great Britain and Italy have not proved by the documents before this court that the fund assigned will not pay all claims within a reasonable time. This can only be proved by the allowances of the mixed claims commissions and by a fair and sufficient proof of the yearly yield of the customs revenues of the two ports. But even if they had proved it, I repeat, Germany is in the same case with the other powers. How, then, can Germany object? Germany not being able to object upon the terms of the contract, will the Governments of Great Britain and Italy claim preferential treatment over Germany? Ah, Mr. President and gentlemen of the tribunal, it was evidently the consciousness of these infirmities of their case that finally led our honorable opponents to rest their claim for preferential treatment on the *ultima ratio regum*.

[Adjourned to to-morrow at half past 10 o'clock.]

MR. PRESIDENT AND GENTLEMEN OF THE TRIBUNAL: Allow me to make a brief résumé of the points I endeavored to establish in the discussion of yesterday. It was shown by the documents that on Decem-

ber 19 Mr. White's note to the Marquis of Lansdowne informed him that Venezuela had conferred upon Mr. Bowen full powers to negotiate with Great Britain, Germany, and Italy; that Mr. Bowen was in fact then in Caracas and did not reach Charleston, S. C., until January 19, and he reached Washington, one day distant from Charleston, on January 20. It was therefore a physical impossibility for Mr. Bowen to have exhibited his full powers before January 20. It is shown by the British Blue Book, page 217, No. 238, that on January 21 Mr. Bowen called on Sir Michael Herbert; that on January 23 (Blue Book, p. 217, No. 240) he accepted the conditions laid down by the British Government, and on January 24 (Blue Book, p. 218, No. 243) he left with Sir Michael Herbert a copy of his full powers authorizing him to settle with all the creditor nations; that on that same day, January 24, Sir Michael Herbert communicated to his Government the full text of that document, and there is not a particle of evidence to show that any other full powers were ever exhibited to the plenipotentiaries. I attempted to show that in the course of the negotiations which led up to the making of the protocols, various terms and conditions had been imposed on Venezuela which she accepted, but that these terms and conditions were some of them modified and some of them omitted in the making of the protocols of February 13; that there is nothing in them about "adequate security;" that there is only the expression by Venezuela of her willingness to provide a sum sufficient for the payment of the claims within a reasonable time; that even that is not expressed in the German protocol, and that in this respect the German Government stands before this tribunal on the same footing as the peace powers; that the protocols are clear and simple in terms, and that the tribunal can no more bring forward into the protocols any condition or guaranty as to security than you can bring forward the condition that the tribunal shall decide about the manner in which the claims will have to be settled and what guaranty will have to be offered for their settlement; that, consequently, the only question as to the adequacy of the security arises out of the expression in the British and Italian protocols of Venezuela's willingness to provide a sum sufficient for the payment of the claims within a reasonable time; that in this respect Germany as well as the peace powers can insist upon the condition of reasonable time, simply as a matter of construction growing out of the intent to make payment of the claims; and that under the protocols, and as a matter of law, the peace powers have the same right to payment in reasonable time as Germany, or as Great Britain, and Italy.

As regards preferential treatment, as has been shown by Mr. Bowen's statement and by the evidence, affirmative and negative, establishing its accuracy, the allies never raised to Mr. Bowen that question until the assignment of January 27, and in the signing of the



protocols of February 13 the allies deliberately abandoned the claim of preferential treatment, if they had ever made it. On January 30 Mr. Bowen gave in writing his reasons for objecting to preferential treatment; and one of them was that the allies should have asked for it in the beginning. It should be borne in mind that the negotiations were largely oral; and the matter was fresh in Mr. Bowen's recollection when he drew the statement of his objections on January 30. The exactitude of his statement was not then questioned; and if it was unfounded in fact it would have been promptly corrected, for that is the method, the habit of diplomacy. Is it not, then, singular that the inaccuracy of that statement that preferential treatment was a fresh claim has only recently been discovered by the honorable counsel in this case? No; the allies were glad to accept the assignment and to sign the protocols of February 13 without any stipulation either as to adequate security or preferential treatment; and the reason of this is stated in the British Blue Book, page 221, No. 252, in the first paragraph:

*Sir Michael Herbert to the Marquis of Lansdowne.*

[Telegraphic.]

WASHINGTON, January 29, 1903.

Venezuela. Italian ambassador and the German chargé d'affaires and I called on Mr. Bowen to-night. I informed him that we were forced to reckon with public opinion in England, and that it might be necessary to fall back on the tribunal of The Hague.

I will not comment on the various phases of that public opinion—it is not in evidence; but here is a significant intimation which suggests the prudent motive which was leading the allies to seek a speedy solution, to accept a prompt solution on the terms which Mr. Bowen had come to. They accepted the assignment in the form in which it was made, and, having already accepted the security, there was no reason why in the protocols they should make any stipulation about adequate security. They accepted the security, and, in the light of their own act of acceptance, it was unnecessary to put into the protocols any other stipulations than they contain. If they had not accepted the security—I say, from the cautious habits of diplomacy, if the allies had not then accepted the security, they would have required, in the protocols of February 13, a stipulation from Venezuela that these revenues assigned should be adequate and that the claims should be paid within a prescribed period. Nothing of the kind was in their minds, and what they did stipulate was that Venezuela should not reduce the rate of the customs duties until these claims were paid. Therein, to my mind, is conclusive proof of the accuracy of Mr. Bowen's statement that they did accept the security without question. Our honorable opponents told you that the allies



asked for preferential treatment in the beginning; that they asked for it the moment the peace powers asked to come in. But we know why—we know why they abandoned their claim. And they are asking the tribunal to give them now what they deliberately abandoned on the 13th of last February.

The protocols of May 7 submitted to the tribunal only one vital question—the question of preferential treatment. That question has to be decided upon the protocols of February 13, for those protocols fixed the rights of the parties then, and the protocols of May 7 did not alter any of those fundamental rights. Under that final and solemn contract of February 13 only two questions were left open—the question of separate treatment and the question of the mode of distribution of the revenues assigned. The blockade was then raised and the war was ended. No new rights have since been acquired by the allies; but nearly three months afterwards the protocols of May 7 were signed, and therefore, in making a claim of preferential treatment, they can do so only as peace powers, for a treaty of peace was made between Venezuela and the allies by the protocols of February 13 (see Venezuelan appendix, page 174). I read, first, article 7, and then article 9, of the British protocol:

The Venezuelan and British Governments agree that inasmuch as it may be contended that the establishment of a blockade of Venezuelan ports by the British naval forces has ipso facto created a state of war between Venezuela and Great Britain, and that any treaty existing between the two countries has been thereby abrogated, it shall be recorded in an exchange of notes between the undersigned that the convention between Venezuela and Great Britain of October 29, 1834, which adopted and confirmed *mutatis mutandis* the treaty of April 18, 1825, between Great Britain and the State of Colombia, shall be deemed to be renewed and confirmed, or provisionally renewed and confirmed, pending the conclusion of a new treaty of amity and commerce.

It was good enough, however, until a new treaty of amity and peace was made. Article 9 says:

The treaty of amity and commerce of October 29, 1834, having been confirmed in accordance with the terms of article 7 of this protocol, the Government of Venezuela will be happy to renew diplomatic relations with His Majesty's Government.

On page 177, article 9, of the Italian protocol:

At once, upon the signing of this protocol, arrangements shall be made by His Majesty's Government, in concert with the Governments of Germany and Great Britain, to raise the blockade of the Venezuelan ports. His Majesty's Government will be prepared to restore—

And so forth. And article 10 is:

The treaty of amity, commerce, and navigation of June 19, 1861, having been renewed and confirmed in accordance with the terms of article 8 of this protocol, His Majesty's Government declare that they will be happy to reestablish regular diplomatic relations with the Government of Venezuela.

On page 181, article 8 of the German protocol, we read:

Immediately upon the signature of this protocol the blockade of the Venezuelan ports shall be raised by the Imperial German Government in concert with the governments of Great Britain and Italy; also, the diplomatic relations between the Imperial German Government and the Venezuelan Government will be resumed.

It can not therefore be argued that the raising of the blockade was any consideration for the making of the protocols of May 7. All the parties were at peace, and the allies can not contend that there was any consideration of a military kind for the making of these protocols. The allies understood, under the protocols of February 13, that only two questions were reserved for the tribunal—two important questions, I mean, of course—namely, the questions of distribution and separate settlement. If the allies did not so understand it, if they did not understand that they had abandoned the claim of preferential treatment by the protocols of February 13, why did they wish to bring that question into the protocols of May 7? They understood that separate treatment does not mean preferential treatment. The meaning of the word "separate" is given in Webster's dictionary. It is "to sever"—not to destroy; "to divide"—not to give precedence; "to select from among others, as for a special use or service." In this respect the protocols of May 7 do not profess to change the already existing rights of the parties, for those rights were fixed by the protocols of February 13. And the question which the tribunal has to decide is whether, according to those rights fixed by the protocols of February 13, any of these parties are entitled to preferential treatment, or whether the allies, as peace powers, are entitled to be sustained in bringing forward their claim of preferential treatment three months after the making of the treaty of peace.

Again, on February 19, President Castro increased the duties 30 per cent of these two ports. This was a voluntary act of his, done after peace was made; no agreement or even request required him to do it, and the effect of this act was to increase by about 10 per cent the customs revenues assigned to pay all the claims. On what grounds can the allies claim an exclusive right to this increase? Not by war, for the war had ended; not by any language or words used in the negotiations; not by any contract or agreement of any kind. Their only right to share in this increased fund is the same right as that claimed by the other creditor nations, namely, that the assignment was made to all of them alike, and their only title to share in it is that the assignment was so expressed. "It is so written in the bond." And during all this controversy the allies have been claiming and asserting the exclusive right to the increase of that 10 per cent, and in doing so they have again affirmed and reaffirmed the binding force of the assignment upon all the parties and especially

upon the allies. When the security was tendered in the form of an assignment to all the creditor states, the allies were at liberty to accept it or to reject it. They were at war. They were at liberty to reject it on either of two grounds; first, on the ground that the allies would have separate treatment; second, on the ground that the security was not adequate. If the allies intended to deny the adequacy of the security, they were bound on principles of fairness and equity to make their election then, to exercise their option when Mr. Bowen exhibited his powers on January 24, and when the assignment was made on January 27, and before the protocols were signed on February 13. They voluntarily accepted the security, and that establishes its adequacy.

While, then, as I understand the matter, the question of adequate security as such is not before the court, yet I will consider it in view of the full discussion which has been made by the honorable counsel on the other side. Our opponents say that they understood that Mr. Bowen offered for security all the custom-houses. Is that right? That is the way I understood it. Our opponents refer to Mr. Bowen's letter "confidential," of January 9.

**THE ATTORNEY-GENERAL.** If Mr. Penfield will allow me one moment; I did not say so. I have not heard it said that the offer was of all the customs.

**MR. PENFIELD.** I understood Mr. Richards to say so.

**MR. RICHARDS.** You must have misunderstood me.

**MR. PENFIELD.** Then I will not discuss it, thank you, if that statement was not made. My notes show that it was made.

As I have already shown, the question of adequate security as such is not before the court, but as it has been the subject of much debate, it will be briefly considered. Neither the protocols nor the ultimatums nor the negotiations define what is meant by "adequate security." Our honorable opponents have repeatedly asserted, and with much emphasis, that the security is not adequate, but vague generalities will not do. They should define. In what sense do they use the term "adequate security?" Is not the security of a stable and trustworthy nature? Is it not of a permanent character until the claims are paid? Under the protocols the Venezuelan Government can not reduce the rates of the customs duties. The ports of La Guaira and Puerto Cabello are the two best ports in Venezuela, yielding the largest revenues. In this sense, therefore, the security is adequate.

The Government of the United States contends that not all claims are properly chargeable against these revenues, and we contend that the revenues assigned are sufficient to assure the ultimate payment of all claims properly chargeable against the fund. No reasonable man will contend that the revenues assigned must be sufficient to pay all

the claims of the allies the moment those claims are allowed. Therefore, some delay before the claims are fully and finally paid was contemplated; but what delay?

This brings us to the consideration of the second principal question in this case: What is "reasonable time?" The phrase has reference, first, to the usage and practice of nations; second, to the political and fiscal condition of the debtor state; and, third, to the amount of the claims. I have received from the Secretary of State a telegram showing that the mixed claims commissions for Germany and Venezuela, France, Belgium, and Mexico have done their work and showing the amount of the allowances. If I may do so, I shall take pleasure in exhibiting it to counsel on the other side and to the court; for, while it is incomplete because the work of the other commissions has not been done, it shows a vast reduction by the mixed commissions on the amount of the claims as presented.

The claimants voluntarily and consciously assumed the risks in engaging in business in Venezuela. They knew that Venezuela was in a frequent state of civil disturbance, and they could not justly expect a State torn with internal dissensions and impoverished by civil wars and by the blockade as punctually to meet her pecuniary liabilities as States like the United States, or Great Britain, or France, or Germany.

We must be just in our treatment of Venezuela, not defending what is indefensible, regretting what may be deplorable, but still taking the situation as it is. The great civil war in the United States closed in April, 1865. In the course of a civil war many irregularities always occur, and consequently the British and French Governments brought forward a large number of claims against the United States. But it was not until May 8, 1871, six years after the war closed, that the convention was signed for the settlement of the *Alabama* claims and of the claims of British subjects growing out of the civil war (1 Moore, *International Arbitrations*, pp. 683 and 546). It was not until January 15, 1880, that a convention was signed for the adjudication of the claims of France (2 Moore, *International Arbitration*, p. 1134). A commission was organized in the year 1889 for the settlement of the claims of the United States against Venezuela, and long delays were given for the payment of the claims, but bearing interest, of course, for deferred payments (see case for the United States, p. 48). Another commission was organized in the year 1894 for the settlement of a large claim of the United States against Venezuela, and long delays were given for the payment of the award (see case for the United States, p. 48). Forty years have recently been given to China to pay the claims growing out of the Boxer movement. I will not tax the patience of the tribunal by citing other and numerous precedents.

Again, our honorable opponents have fallen into the error of a twofold exaggeration. First, there is the exaggeration of the amount of the claims. My learned brother, the German agent, estimates them at 190,000,000 bolivars, equivalent, approximately, to \$40,000,000. In the memorandum communicated to the Reichstag (*British Blue Book*, p. 175, No. 194) the amounts of the German claims are stated as follows: Three million bolivars from the late civil war, 1,700,000 bolivars from the civil war of 1898 to 1900—this last sum has been paid—7,500,000 bolivars on account of the Great Venezuela Railway, 600,000 bolivars for seizure of cattle.

These unpaid claims that I have specified amount to 11,100,000 bolivars. To these claims the German Government added other large claims (see Venezuelan appendix, p. 165). The slaughterhouse claim they specify there. I have been unable to find an authentic statement of the amount of the slaughterhouse claim or of the railroad claim for interest, but I have understood that they amounted to several millions of bolivars, to be added to the 11,100,000 bolivars, and yet the work of the German-Venezuelan Commission is finished and the total amount they allowed on the German claims, as stated in the counter case, page 38, of the German Government (and that corresponds to my own telegram from the Secretary of State), is 1,673,527 bolivars, or less than 10 per cent of the total amount claimed. This, then, is in substantial accord with the experience of the United States in mixed claims commissions with other nations. That statement is found in the appendix to the case of Venezuela. The statement I prepared myself and I know that it is substantially correct; the references are given.

Our opponents have fallen into another error of exaggeration of a negative kind. The yearly yield of revenues of the two ports was estimated by Mr. Bowen at 18,000,000 bolivars. Now, the German agent has produced figures showing the yield for five months, viz, from March to July last, inclusive, 1,754,000 bolivars, and on this basis it has been contended by our honorable opponents that there will be a great reduction on the estimates made by Mr. Bowen. According to the estimate of the German agent the two ports will yield 4,000,000 bolivars, but they have failed to advert to the fact that customs revenues vary from month to month throughout the year, and that with the restoration of peace and of industrial stability and prosperity the revenues will probably exceed the estimate of Mr. Bowen. I will not enlarge upon the unhappy political and fiscal condition of Venezuela, but distracted as Venezuela is it has not been proved that the revenues assigned will not suffice for a final payment of all the claims. In the light of the usage of nations, and in the broad and enlightened sense of justice, as administered by this tribunal, and of the probable yield of the revenues assigned, and of the



claims allowed and to be allowed, all claims properly chargeable against the fund will be paid in reasonable time.

Our honorable opponents contend that the allies gave notice to the United States, France, and Belgium of their contemplated action; that the latter powers did not object; that they were silent and acquiesced; that they should have protested, and that, by their failure to protest, the allies were given a free hand; that, moreover, the United States Government was the medium of communication between the belligerents, and that it assented to the action of the allies; and they contend that consequently as France and Belgium and, especially, the United States did not object, the allies are entitled to preferential treatment. The statements, as I understand the matter, are partly correct, partly inexact, and altogether incomplete. Now, what are the actual facts? The British and German Governments did communicate to the United States Government memorandums indicating the nature of their grievances and their contemplated action. The Secretary of State replied that, although the United States Government regretted the use of force, the United States could not object to their taking steps to obtain redress for injuries suffered by their subjects, but making certain reservations of policy. Later, the British Government declared through its ministry in the Parliament that, as to the policy referred to, they were in accord with the United States. The notice given by the allies referred, and was understood to apply, to the policy in question. Notice was also given to the United States by the allies that the proposed means of coercion would be a pacific blockade, according to which the ships of neutral States would have to be turned away from the blockaded ports. This notice was promptly answered by the United States with the statement that they could not acquiesce in the view that a pacific blockade would justify interference with neutral shipping. The British Government announced through its ministry in the Parliament its concurrence in this view. And well it might do so, for I believe it was Lord Palmerston who first gave an official statement of that view held by the British Government. Well, then, the allies gave notice as to points only wherein they themselves conceived that the interests of the United States, France, and Belgium might be concerned.

The notice to France referred to certain securities, and to Belgium the same, as I understood. I will not speak with a degree of certainty about the notice to France and Belgium, because I have addressed myself to the case of the United States and I have stated it accurately as to the substance and object of the notice given to the United States. The allies gave notice to the United States as to points only wherein the allies themselves conceived that the interests of the United States might be concerned, but never did the allies intimate—never did they give any notice—that they would claim



paramountcy over the other creditor states in simple matters of justice. If the allies had given notice of the claim they are now asserting it would undoubtedly have elicited some answers from all of the states notified. If, then, any government has lost or waived any right by silence, it is the allies. For there can be no loss or waiver of a right through the silence and acquiescence of a neutral government on a matter not already governed by international law, unless the government proposing to take the adverse action notifies the neutral government that it proposes to take that action. If it then acquiesces as to the particular point mentioned in the notice, that is another question; but that is not the question before the court.

The contention that a neutral government loses its rights by acting as the medium of communication between belligerents has, at least, the merit of novelty. If that were to be recognized as a principle it would be very inconvenient in the conduct of international relations. The contention may be dismissed with the observation that when the war broke out diplomatic relations between the belligerents were at an end and their subsequent communications to one another were made through the United States minister at Caracas and through the Secretary of State. When the United States Government was requested to lend its good offices in that behalf none of the belligerents suggested and nobody imagined that compliance by the United States with that gracious request would entail the loss or forfeiture of any of its rights. The truth is that the allies and the United States were undoubtedly acting in good faith toward each other and none of them anticipated that this question would ever arise. Therefore, so far as the United States is concerned, there could be no waiver or acquiescence.

It is contended that the peace powers ought not to have intervened between the allies and Venezuela. It is clear, however, that the tribunal can not consider the question whether the peace powers had a right to step in or intervene between the belligerents; for while the contention does not express a correct conception of the actual situation, and while the action of a neutral state who stands by and awaits the favorable moment to snatch from the conqueror the fruits of his victory is not deserving of encomiums, yet even if the peace powers had intervened between the belligerents instead of with Venezuela alone, that would be an act of policy which the tribunal can not consider. Even if we admit, for the sake of the argument, that the intervention was of the character described by our opponents, still there is the accomplished fact. And the court will simply decide on the collective contract and upon principles of international law whether the peace powers shall have and enjoy what has been lawfully and voluntarily given to them by the debtor state. If Venezuela had assigned the customs revenues to the allies only, and if the

peace powers had stepped in and claimed a right to share in that assignment, such action would have been an intervention between Venezuela and the allies. But the assignment was made by Venezuela in the exercise of a duty to pay all of her debts to the creditor states, and it is the allies themselves who step in between Venezuela and the peace powers and seek to deprive the latter of their share in the security expressly assigned to them for the payment of their claims and to appropriate it exclusively to themselves. Such a right can only be maintained by force, not by law—first, because it is in violation of the contract itself; and, second, because it could be done only as an act of war against the peace powers, since it would take from them the enjoyment of a right expressly given to them.

The entire argument of our honorable opponents rests on an erroneous conception of the interventions of the various governments in Venezuela. They are treated as if they were political interventions—first, with Venezuela; and, second, on the part of the peace powers, as if they were intervening between Venezuela and the allies. All arguments drawn from these premises are necessarily misleading. There was no war waged for any political purpose whatever; the war against Venezuela was waged simply to secure the payment of debts of justice and this can not carry with it the right, as a right of war, to deny justice to other states unless the right is to be enforced by war.

If the allies had engaged in war with Venezuela for political objects, other states could intervene only on grounds of policy or unless their own rights were directly affected. If the war had been begun and waged over conflicting boundary claims, or other dispute of a political nature, other powers whose rights were not directly affected could not properly intervene to deprive the victor of the fruits of his success. But if other states were making a bona fide claim to a disputed territory they would have the right to assert their claim against either or both of the belligerents, and if their claim was a just one an arbitral tribunal would respect it. Now, the fact that the peace powers had claims against Venezuela equally just as the claims of the allies is not disputed, and that Venezuela had the right to provide for the payment of all of them is not disputed.

She has paid the first-rank claims of the allies, and she had the right to accord the most-favored-nation treatment to all the others. The allies do not deny that right. They admit the substance of the right to grant most-favored-nation treatment, but they dispute the form of it in the assignment, after they have accepted the assignment and Venezuela has performed her duty to accord most-favored-nation treatment in the only way that was then practicable or even possible. How could she have granted, in any other way than the one she did, the most-favored-nation treatment? The amounts of

the unpaid claims of the allies, as well as those of the peace powers, were unknown and unknowable when the protocols of February 13 were signed, and they are unknown to this day, and they will not be known until the mixed claims commissions have completed their labors. If, then, Venezuela had assigned a certain percentage of the customs revenues for the payment of the claims of the peace powers, how could the peace powers know that they had been given most-favored-nation treatment? If Venezuela had given the peace powers, in the opinion of the allies, more favorable treatment than she gave to the allies, would the latter have been satisfied? Would they not have demanded a new assignment—a further assignment—just as they did demand and obtain from Venezuela fresh protocols for the creation of mixed claims commissions after they learned of the certain more favored treatment that the peace powers had obtained in the protocols which they made with Venezuela?

The argumnet of our opponents then comes to this, that the allies are entitled to all the revenues of Venezuela. If preferential treatment is acknowledged as a principle of law governing the relations of creditor and debtor nations, that is what it means—that the nation that first declares a war against a debtor state can take all of the revenues of the debtor state.

But we were asked on what grounds of fairness or equity can the argument be put forward that a power who has stood by and done nothing can have any claim to reap the advantages obtained by the labors and losses of others. Did France do nothing? Did the President of the United States do nothing? The United States was pressing its claims against Venezuela. And did the United States Government do nothing to get a settlement of its own claims and to bring about a settlement of the controversy? The very fact that these conventions or protocols for mixed claims commissions were framed between Venezuela and the peace powers shows that the peace powers had intervened with Venezuela. Debtor states do not usually come forward and volunteer to pay claims unless there has been a diplomatic intervention by a creditor state asserting the claims. On what ground of fairness can it be contended, then, that because the peace powers did not take part in the blockade they have not as good a right as the allies to settle their controversy with Venezuela, and how can it be argued that the peace powers could not or would not have obtained a settlement or security of their claims had it not been for the action of the blockading powers? Has not the United States Government already, within the last few years, obtained two settlements by arbitration of its claims against Venezuela?

It is contended by our honorable opponents that the allies had engaged in naval operations against Venezuela, had captured her ships and blockaded her ports, that her whole object was to get rid

of the blockade, and that on the other hand the other creditor powers were putting no pressure on Venezuela and had nothing to give in exchange for concessions from that country.

It would be erroneous to suppose that diplomatic pressure exerted may not be, and is not in fact, often as effective as pressure by war. Nor was it a case, as seems to be supposed, where two states engage in an exchange of concessions. It was simply a question of the collection of claims, and this may be as effectively done by diplomatic as by military procedure. Neither the allies nor the peace powers were seeking political ends or conquests, but simply the payment of their claims. And yet it is argued that the peace powers had nothing to give in exchange for the payment of their claims, as if it were a question of levying ransom instead of the payment of just debts, or as if the peace powers either were without military or naval force or were not entitled to claim the most-favored-nation treatment of their claims unless and until they declared war against the debtor state.

That position is one which the peace powers contend should not be sanctioned by the award of this court.

This was not, then, in any of its phases, from first to last, intervention for political purposes, and the intervention with Venezuela was conducted by the allies through the diplomatic and military procedure, and by the peace powers through diplomatic procedure only; and it is permissible, it is lawful, and indeed it is customary for a debtor state in such circumstances to make provision for the lump settlement of all its exterior liabilities. It was so in China; it was so in Egypt and Guatemala. It is a wholesome and, in fact, a necessary practice, because otherwise when a debtor state is weak and drifting into bankruptcy, if the court were to sanction the view contended for by the allies, the decision would not only incite creditor states to violence against the debtor state, but it would promote war between the creditor states themselves.

The United States has never claimed that one nation can not take action to obtain satisfaction from another state in respect of its own claims, but it denies that such action prevents other creditor states from insisting on the most-favored-nation treatment of their claims of justice, or that it prevents them from accepting a security tendered to them. The entire argument of our opponents is based on the fallacious assumption that a superior sanctity attaches to the claims of the creditor state who first resorts to war, so that all other creditor states are denied the right even of negotiation with the debtor state, since those negotiations might result in an assignment of revenues objectionable to the pretensions of a belligerent creditor state. We concede that separate treatment each creditor state may insist on if it will, but this right belongs not less to a nation at peace than to one

at war. But if they all accept a common security they waive the claim to preferential treatment.

The argument of the allies then comes to this—that the United States was powerless to enforce its own claims; that it has nothing to give; that there is no such thing as moral force, no such thing as effective diplomatic procedure; that the only effective action is the military; and that a war begun by one creditor state entitles it, by the law of nations, to say that other creditor states must join the aggressor in the warlike operations on terms to be dictated by the latter, who may refuse even to consent to their participation except upon such rigorous conditions as would preclude the peace powers from accepting and enjoying the benefits of their security, and that consequently the peace powers are precluded from accepting any security whatever if the aggressor considers that it would be prejudicial to his security, small or large, which he may wish to obtain. For they contend that war, as such, gives to the aggressor a paramount right of security and payment, and excludes, in principle, the right of giving to other creditor states any security whatever. That is what preferential treatment means, if it is to be declared as a principle of public law.

And our opponents argue that all this makes for peace, and that unless their position is upheld by the tribunal the aggressor will make war, not only upon the debtor state, but upon the other creditor states to enforce the claim of paramountcy, and that the way to avoid such wars between creditor states and advance the cause of arbitration and peace is for the court to uphold their contention. Thus the chain of logic is complete by which it is proved that a state of war is a state of peace.

When we point to the precedents all supporting our contention on the principle of equality and nondiscrimination in matters of justice our honorable opponents are driven to the extremity of seeking to discriminate this case from the precedents set in China, Egypt, Turkey, Guatemala, and Haiti. They do not deny that the principle of equality in matters of justice is generally recognized between nations, but they contend that, because the claims in one case arose out of an insurrection in China while the claims in this case arose out of an insurrection in Venezuela, the cases are entirely different. Both grew out of an insurrection, and in substance and in principle the cases are the same.

But finally they contend that the cited precedents are not in point, because in those cases no preferential treatment was demanded. It is a strange argument to advance against a settled practice of nations that because some novel thing is demanded contrary to that settled practice that the practice is wrong or that the innovation is right because it is an innovation. The fact that neither in China, nor in



Haiti, nor in Guatemala, nor in Egypt was preferential treatment demanded shows the opinion and usage of nations. What if Great Britain, after her successful war in and occupation of Egypt, had claimed preferential treatment of her claims, would the other creditor states have willingly conceded it? When the allies gave notice to the United States and France and Belgium of their contemplated military action against Venezuela there was no intimation that they proposed to subordinate the claims of the peace powers to their own. If the allies had made such claim, would the peace powers have willingly conceded it?

In the light of all the precedents (for the usage of the nations is all one way) the peace powers had a right to expect that there would be no discrimination in matters of justice. They had a right to say that Venezuela might properly make a lump settlement of all claims, placing them on the same footing as was done in China, Guatemala, Egypt, and Turkey, and as is being attempted this very moment with another debtor state. If the contention of the allies is upheld by the court it may well be taken as a signal for war by any creditor state against a weak debtor state, because our honorable opponents tell us, "What ye sow that ye shall reap," and the creditor state who sows dragon's teeth is entitled to reap a rich harvest of its own justice to the detriment and denial of justice to other states. What a spectacle would it exhibit to the civilized world? Five great nations—Germany, Great Britain, Italy, France, and the United States—all compelled to declare war against some weak debtor state simply because some other creditor state had declared war!

Our opponents contend that the other creditor nations are in the same position as Venezuela; that the peace powers only have the same rights as Venezuela, as against the allies. The notion on which this argument is based is not new; this was the notion advanced over a century ago—that when a maritime war was carried on the rights of neutral powers were at the mercy of the belligerents, and that a peace power only had the same rights as a belligerent conceded to his adversary.

There was once a notion that all trade and commerce, by land and sea, were at the mercy of either or both belligerents. That notion has long since been exploded, an advanced position has been taken, and all nations now agree that peace powers have certain rights as against either or both belligerents. I will not enumerate the admitted rights of neutral states; they are familiar to the tribunal. I simply suggest them for its consideration, and after you have considered the nature and variety of those now conceded rights, then consider, if you please, the contention of our opponents and answer whether the other creditor nations—the peace powers—are in the same position as Venezuela or not. In no other branch of international law has there



been, during the last one hundred years, such constant and rapid advancement as in that which concerns the rights of neutral states. These are grave questions affecting the international administration of justice and the growth of international law. The equality of states with respect to matters of justice is an accepted principle of international usage and practice, which more and more conforms to international law in that respect, as I have already shown in this argument, and as was shown in the appendix to the case for Venezuela. The question of principle, then, which the tribunal has to decide, is whether the peace powers are to be made to suffer because they did not declare war against Venezuela. The question of principle which you have to decide is this: If one creditor state, from motives of policy (which, as representing a neutral state, I will neither praise nor blame), declares war against a debtor state, are all the other creditor states put to the alternative of either declaring war or of suffering, perhaps, the total loss of their claims? These are truly great and interesting questions which the tribunal has to decide.

I will now read a statement, handed to me by Mr. Bowen, as a part of my argument:

The peace powers, in this case, did not expect anything but equity of treatment; they therefore did not attempt to mediate between the allied powers and Venezuela. They expected the negotiations to end soon and the blockade to be raised as soon as the negotiations began. Special attention has been called to the fact that the United States did not object to the blockade, and it has been implied that she was particularly well informed as to the intention of the allied powers, because all the early negotiations with Venezuela were carried on through her. As a matter of fact, she expressed regret, as Mr. Hay's note shows, that coercive measures seemed necessary, and if she acted as the medium of communication it was only because the allies had withdrawn their ministers from Caracas and the minister of the United States was representing them temporarily. The United States disclaims all responsibility for the war. She suggested arbitration to both the allied powers and to Venezuela, and it was well known that from the very beginning of the controversy the President of the United States favored submitting it to this tribunal. Here it is, and here we are confident it will be decided according to the most enlightened principles of justice and law.

In conclusion, we reaffirm the position that the denial of the right of creditor states to accept security which has been voluntarily and expressly assigned to them by a debtor state (and which all the creditor states have deliberately accepted)—the denial of that right of acceptance afterwards by a part of them—is inconsistent with the comity of nations and with the equality of states; that the recognition of this right of acceptance by the tribunal would be conducive to the maintenance of relations of peace and friendship between the creditor nations themselves and between them and a common debtor; that the allies were duly notified of the claims of the creditor states, and that

they would expect the most-favored-nation treatment; that the allies never demanded preferential treatment until the assignment of the revenues by Venezuela, but that whether the allies had demanded it or not they deliberately abandoned it when they signed the protocols of February 13; that, under those protocols, the only vital question in dispute was the question of the distribution of the trust fund and the mode of its separation or appointment, so that the allies could separately receive their share of the fund to be distributed on their respective claims; that the protocols are complete within themselves and can not be altered or enlarged by importing into them terms and proposals made during the course of the negotiations, but which were omitted in the protocols; that in respect to the language and terms or conditions mentioned during the negotiations, Germany stands in the same position as the peace powers by reason of the language of her protocol, and could not claim preferential treatment except as the bare right of war (which we do not concede), which she waived when she signed with Venezuela the treaty of peace; that even if the words "adequate security" were imported into the British and Italian protocols, contrary to the maxim for the interpretation of treaties, there is no evidence from which it can be judicially decided that the security given is inadequate, according to the usage and practice of nations and the enlightened principles of justice administered by this tribunal; and that consequently the allies have failed to establish their case.

Mr. President and gentlemen, I thank you.

## REPLY OF SIR ROBERT FINLAY ON BEHALF OF GREAT BRITAIN.

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MEETING OF NOVEMBER 11, 1903.

The ATTORNEY-GENERAL. May it please the tribunal, I now rise to reply on behalf of Great Britain to the various observations that have been made by the representatives of the other powers.

It was with some surprise that I heard, in the course of those observations, a good deal said which seemed to imply that Great Britain in this matter was to be regarded as the representative of force against law. I venture to say that in this matter, as in the course of history, Great Britain has proved that, above all things, she desires that rights should be observed and that war should be avoided whenever it is possible to avoid war. It is not contended that the rules of international law have been altered by the peace conference and by the great results which have followed from that conference, but it is said that at that time a new spirit was infused into the relations of the peoples of the world, and that, in some way or other, Great Britain in the course of this transaction has not shown herself in consonance with that new spirit. I venture most respectfully to say that no more unfounded charge was ever made against any country. Great Britain welcomed the new departure in 1899. Great Britain has ever shown a most friendly disposition toward the settlement of disputes by arbitration, and I think I may say that it is to the representative of Great Britain at the peace conference that there was due the initiative on one point of the greatest importance, which has resulted in the establishment of that august tribunal which I have now the honor to address. I turn to the records of the *Conférence Internationale de la Paix*, the official record, and I find at page 117 a passage to which in this connection I may be permitted to call the attention of this tribunal.

It has been suggested that Great Britain, of all powers, was anxious to have recourse to war rather than to peaceful arbitration. Let me recall to the memory of those gentlemen who have made that charge that it was a representative of Great Britain who was the first to bring forward in an official form the proposition at that con-

ference to which the great result is due that this permanent court has been established. I read at page 117:

Il n'est point de projet qui ait été accueilli avec plus de sympathie que celui de l'établissement d'une Cour permanente d'arbitrage. La proposition faite à cet effet par son excellence Sir Julian Pauncefote a brillé au début de nos séances.

Rappeler ici cette mémorable et féconde initiative, c'est accomplir un devoir de justice et marquer en même temps l'orientation générale de tous nos travaux dans cet ordre.

Dans la séance du 26 mai 1899, son excellence Sir Julian Pauncefote s'est exprimé en ces termes :

" M. le Président, permettez-moi de vous demander si, avant d'entrer plus loin en matière, il ne serait pas utile et opportun de sonder la commission au sujet de la question la plus importante, selon moi, c'est-à-dire, l'établissement d'un tribunal permanent d'arbitrage international, que vous avez touchée dans votre discours.

" On a fait beaucoup de codes d'arbitrage et de règlements de procédure, mais la procédure a été réglée jusqu'à présent par les arbitres ou par les traités généraux ou spéciaux.

" Or, il me semble que de nouveaux codes et règlements d'arbitrage, quel que soit leur mérite, n'avancent pas beaucoup la grande cause qui nous rassemble.

" Si l'on veut faire un pas en avant, je suis d'avis qu'il est absolument nécessaire d'organiser un tribunal international permanent qui puisse se réunir immédiatement à la requête des nations contestantes. Ce principe établi, je crois que nous n'aurons pas beaucoup de difficulté à nous entendre sur les détails. La nécessité d'un pareil tribunal et les avantages qu'il offrirait, ainsi que l'encouragement et même l'élan qu'il donnerait à la cause de l'arbitrage, ont été démontrés avec autant d'éloquence que de force et de clarté par notre collègue distingué M. Descamps dans son intéressant 'Essai sur l'arbitrage,' dont un extrait se trouve parmi les actes et documents si gracieusement fournis à la conférence par le gouvernement néerlandais. Il ne me reste donc plus rien à dire à ce sujet, et je vous serais reconnaissant, M. le Président, si, avant de procéder plus loin, vous consentiez à recueillir les idées et les sentiments de la commission sur la proposition que j'ai l'honneur de vous soumettre touchant l'établissement d'un tribunal permanent d'arbitrage international."

To the principle of arbitration Great Britain has been faithful, and I venture to say that Great Britain never showed more signally her desire for a peaceful settlement of disputes than in the matters which form the subject of consideration now by this tribunal. Great Britain did not go to war until she was forced into war, and as soon as an opportunity presented itself of exchanging a peaceful arbitrament before this tribunal for the arbitrament of force, Great Britain availed herself of that opportunity. I need not recapitulate the series of outrages committed against Great Britain and her subjects, culminating in the seizure of the *Queen* upon the high seas by a Venezuelan vessel, which compelled Great Britain to take action. I would only, in one word, recall to the attention of the tribunal that no attempt throughout the whole course of this discussion has been made to justify the action of the Venezuelan officials. With regard to the seizure of the British vessel, the *Queen*, a seizure effected on the

high seas, effected under circumstances where there was not even a pretense of right, and a seizure for which redress was asked, but asked in vain. Upon that subject there has been complete silence on the part of the representatives of Venezuela—a silence which can be accounted for only by the fact that they felt that it was absolutely impossible to justify such action. Great Britain was compelled to ask redress in respect of the series of acts which culminated in the seizure and destruction of the *Queen*, and I venture to submit that that particular action—on the absence of all defense for which I have felt it my duty again to comment—was an action of such a character that it could hardly have been taken by any power that did not presume upon its weakness as emancipating itself from the restraints of international law.

What was done under such circumstances? Did Great Britain rush into war with Venezuela? On the contrary, so far from neglecting, so far from despising—as was said by the delegate of one of the powers—the efficacy of diplomacy, Great Britain exhausted every resource of diplomacy before she was forced into hostile measures.

On the 29th July Lord Lansdowne wrote that dispatch, to which the attention of the tribunal has already been called on more than one occasion, in which he asked for an assurance against the recurrence of such incidents. The reply was a refusal even to discuss the matter. And for what reason? Because it was said that Venezuela had a claim against Great Britain in respect of the action of the *Ban Righ*. I have already submitted to this tribunal the ground on which I assert that that claim in respect of the *Ban Righ* was one of the most frivolous ever put forward by one power against another. Again, although there was a good deal in the opening statement on behalf of Venezuela with regard to the *Ban Righ*, we have heard no justification since that opening statement of the claim which Venezuela asserted against Great Britain, on the alleged ground that in this matter Great Britain had in some way or other disregarded the law of nations. I have said already, and I venture to repeat it, that in the matter of the *Ban Righ* Great Britain acted as she was bound to act, that she could not have acted otherwise without a breach of international obligations, and that in respect of the *Ban Righ* Venezuela, if the facts had been inquired into, would have known that she had absolutely not a shred of a claim against Great Britain. But on this frivolous pretext there was a refusal even to discuss the remonstrance of His Majesty's Government, and the request that there should be an assurance that such action as that in the case of the *Queen* should not be repeated.

Time went on, and on the 11th November Lord Lansdowne sent another dispatch—it is No. 164 in the British Blue Book, inclosure 1,

at page 163—when Mr. Haggard, in conformity with his instructions from Lord Lansdowne, said that His Majesty's Government "are unable to admit that the serious causes of complaint put forward can be met by a refusal to discuss them. If such a refusal is persisted in, it will become the duty of His Majesty's Government to consider what steps they should take for the protection of British subjects. They are, however, unwilling to exclude at once all possibility of proceeding with negotiations, and they are, therefore, ready to consider any further communication which the Government of the Republic may be prepared to make." There again Lord Lansdowne invited negotiation and showed that he was willing that all the resources of diplomacy should be exhausted before recourse had to be taken to measures of coercion. The reply again was a simple refusal to discuss those grievances which had impelled His Majesty's Government to have recourse to these remonstrances.

On the 2d December there followed the ultimatum, and the terms of the ultimatum are shown in No. 161 in the British Blue Book, at page 160, and there again Lord Lansdowne, while calling pointedly the attention of the Venezuelan Government to the urgent nature of the case, requested Venezuela to make a declaration that they recognize in principle the justice of these claims; that they would at once pay compensation in the shipping cases, and in the cases where British subjects have been falsely imprisoned or maltreated; and that as to the other claims they would be prepared to accept the decision of a mixed commission with regard to the amount and the security for payment to be given. There again, while stating that certain of the claims were of such a nature that they must be settled at once—and I venture to think I shall have the approval of the tribunal when I say that there are certain matters touching national honor which are not appropriate for reference to arbitration, certain matters which involve the national well-being, because if the national honor is infringed with impunity, the position of the nation affected in the councils of the world is at once prejudiced—while there are certain matters of that kind which can not, and ought not, to be submitted to arbitration, with regard to all other matters Lord Lansdowne again brings to the attention of the Venezuelan Government the desire of His Majesty's Government for a settlement, and says that they are ready, that the amounts and the security should be referred to the arbitration of a mixed tribunal. The answer again was a simple refusal to consider the claims of Great Britain against Venezuela.

Venezuela never offered arbitration, and even refused it when it was offered to her. It will be in the recollection of the tribunal that Germany offered arbitration so long ago as the 19th July, 1901; the documents will be found in the Venezuelan appendix, at pages 18 and 19—I will not occupy time by reading them; the fact has been



referred to over and over again in the course of these discussions, and it is a fact that I must emphasize when an attempt is made to hold up to this tribunal, and to hold up to Europe, the blockading powers as if they had despised the resources of diplomacy and relied upon force alone. To that appeal by Germany Venezuela was deaf, as she was deaf to all the remonstrances of Great Britain. She replied by simply refusing to consider those repeated and those urgent applications that were made to her.

Under those circumstances Great Britain was forced to take action. If no reply is made to your remonstrances, unless you are prepared to make it patent to all the world that when you bring forward the grievances of those who depend upon you, you are content to be absolutely ignored and to have your representations treated with contempt; you must under such circumstances take some action. I venture to say that with regard to the action of Great Britain, even the very stringent tests which my friend M. Clunet propounded as necessary to be satisfied before war is now entered upon were satisfied. What else could be done? Was it possible, after having exhausted all the resources of diplomacy, that Great Britain should, simply because Venezuela is a comparatively small and weak power, say that she was content to sit down under the outrages which had been inflicted upon her subjects? Was Great Britain to rest satisfied with the answer which the representative of Venezuela with great sang-froid, if I may be permitted to say so, gave to Mr. Haggard—that Venezuela was “accustomed to such communications.” After such treatment only one course was possible. That was the course adopted by Great Britain with the greatest possible reluctance. There was no glory to be got out of such a war. Risk is inseparable from war; it is a troublesome and thankless business; but there are circumstances under which no country can afford to allow its remonstrances to be ignored and to be flouted.

But not only was Great Britain extremely slow to enter into war, but she seized the very first opportunity of substituting for the sterner arbitrament of war a peaceful discussion before this tribunal. Under those circumstances I do very respectfully submit to the tribunal that the charge that Great Britain has not been faithful to the spirit of the conference of 1899 is a charge which is not only unfounded, but absolutely ridiculous.

Now, what is the question which is submitted to the tribunal? I have listened with very great interest to the addresses of my learned friends who have appeared for the other powers, and I venture to submit for the consideration of the tribunal that they have shown a disposition unduly to narrow the powers and the scope of this arbitration. M. Clunet said, with great force and eloquence, that the only question was whether you could find a contract, a consensus and vincu-

lum juris by which a pledge, a gage, of the 30 per cent in favor of the blockading powers was constituted—well, if the protocols had contained such a pledge, such a hypothecation in favor of the blockading powers, we should not have been here. We are here because, the question having arisen, it was agreed to leave it to this tribunal. If M. Clunet, by his observations upon this point, confines himself to the protocol, the answer is short and easy. If he meant to go further and to say that from the course of the negotiations there could not be implied an obligation on the part of Venezuela to give that undertaking in favor of the blockading powers, then I venture most respectfully to differ from him for the reasons which I shall give to the tribunal presently.

Judge Penfield, on behalf of the United States, was a good deal bolder than my eloquent friend M. Clunet, for Judge Penfield asserted that the protocols and the attending circumstances amounted to an abandonment by the blockading powers of any claim for preferential treatment. Again I ask, if there has been an abandonment of the claim for preferential treatment, why are we all here? What have we all been debating about for the last eight or nine days? We have been so engaged because instead of abandoning—so far from abandoning that claim for preferential treatment the powers have insisted upon it; but while insisting upon it, they prefer peaceful arbitrament to imposing their will, while they were confident in the justice of their cause upon Venezuela. They might have done that, but relying upon the justice of their cause, they come before this tribunal and ask that it should be asserted in form of law. And not only did we enter into the protocol agreeing to leave the question to this tribunal, but we had expressed our perfect willingness, by way of securing an early settlement, to leave the question to the arbitration of the President of the United States, whom Judge Penfield to-day represents.

Judge Penfield said that the claim for preferential treatment was a novelty in the protocol of the 7th May, 1903, and he based that observation upon the statement that the protocol of the 13th February, 1903, spoke only of "separate treatment" for the blockading powers, while the protocol of May speaks of "separate or preferential treatment." Now, I venture to invite the attention of the tribunal to this point, and I ask them to say that it is as clear as anything can be that the word "separate," used in the protocol of the 13th February in article 5, must in the nature of things mean the same thing as the fuller expression which is employed in the protocol of the 7th May, 1903. The fifth article of the protocol of the 13th February is in these terms—I only read the sentence which is material, it is the second paragraph of the fifth article: "Any question as to the distribution of the customs revenues was to be

assigned, and as to the rights of Great Britain, Germany, and Italy to a separate settlement of their claims shall be determined, in default of arrangement, by the tribunal at The Hague, to which any other powers interested may appeal. And then on the 7th May we have the further protocol, which recited that protocols have been signed between the various powers; that the questions arising had not proved to be susceptible of settlement by ordinary diplomatic methods, and that the powers had resolved to determine these questions by reference to arbitration, and went on to say in the first article: "The question as to whether or not Great Britain, Germany, and Italy are entitled to preferential or separate treatment, in the payment of their claims against Venezuela, shall be submitted for final decision to the tribunal at The Hague." And then the rest of the article goes on into further details.

Now I do put it to the tribunal that it is as clear as noonday—a great deal clearer than noonday at this time of year sometimes is—that these two articles mean exactly the same thing. When article 5 of the protocol of the 13th February spoke of "separate treatment" for the blockading powers, did it mean that they were to be separately treated in the sense of being postponed to the nonblockading powers, or did it mean that they were to be separately treated in the sense of being preferred to them? It is obvious, I think, that it can have only one meaning. The claim to separate treatment was a claim to come in before the others—the transaction speaks for itself. And when we come to the document of the 7th May, which is for the purpose of working out in detail the arrangement that had been agreed upon on the 13th February, fuller language is employed. I do not spend time in reading the whole of the article, it is so familiar to the tribunal, but I do put it that the idea that separate treatment did not mean preferential treatment is one of those arguments which show nothing except the straits to which the advocate is reduced.

Another document was invoked by Judge Penfield in support of his contention that the blockading powers had abandoned their claim to preferential treatment; that was document No. 252 in the British Blue Book at page 221—a dispatch from Sir Michael Herbert to the Marquis of Lansdowne of the 29th January, 1903, on the first sentence of which Judge Penfield relied—

the Italian ambassador, the German chargé d'affaires, and I called to-night on Mr. Bowen. I informed him that we were forced to reckon with public opinion in England, and that it might be necessary to fall back on the tribunal of The Hague.

If I rightly understood Judge Penfield; he argued that that reference to public opinion in England was a reference which showed that Sir Michael Herbert felt that he might have to give way on this question of preferential treatment. I venture to say that one only needs to

read the dispatch to see that when Sir Michael Herbert was talking on this matter with Mr. Bowen, and told him that they had to reckon with public opinion in England, he was giving a reason for not giving way; he was pointing out to Mr. Bowen that public opinion in England must be consulted, and that in deference to that public opinion they might have to fall back upon the tribunal of The Hague. The passage, when looked at with any attention, bears a sense precisely opposite to that which Judge Penfield attributed to it.

And, finally, on this point Judge Penfield referred to a document which is to be found on page 171 of the Venezuelan appendix. It is entitled "Interpretation of protocols." It is dated the 14th February, and it is in these terms:

We interpret our three protocols to mean that the 30 per cent referred to therein of the total income of the custom-houses of La Guaira and Puerto Cabello shall be delivered to the representative of the Bank of England at Caracas, and that the said 30 per cent is not assigned to any one power, but is to be retained by the said representative of the Bank of England in Caracas and paid out by him in conformity with the decision rendered by the tribunal at The Hague.

My honorable opponent actually said that that was equivalent to the abandonment by the blockading powers of their claim to preferential treatment. Is it not as clear as anything can be that that is a mere arrangement as to the custody of the fund? That the claim to preferential treatment is maintained intact, and that that is the claim which was referred to this tribunal? The truth is that the question for decision is stated very clearly indeed in the protocols themselves—in article 5 of the protocol of the 13th February and in article 1 of the protocol of the 7th May. The parties had joined issue on the question of preferential treatment to the blockading powers. The blockading powers were in a position to enforce their own view upon the subject, but they agreed that the question should be decided in a peaceful manner. In the eloquent words which have been quoted, "the sound of cannon on a distant shore has been replaced by argument before this tribunal." The right to preferential treatment was insisted upon. The mode of determining that right was changed.

Now, how is this tribunal to discharge the task which has been imposed upon it? I very respectfully submit that M. Woeste, in his extremely forcible address, took much too narrow a view of this subject. He said over and over again "*où est votre titre? où est votre titre?*" And he argued that unless we could show in the protocols or in some document, signed by the representative of Venezuela, a hypothecation of these funds specially for the benefit of the blockading powers, it was impossible for us to show our title. M. Woeste, as he put forward that argument, must himself have reflected that if there had been any such instrument we should not

have been here, and we should not have had the pleasure of listening to his very forcible and very eloquent address. It is precisely because there is no such instrument that we owe the pleasure we have had in listening to his address and to other addresses which have been delivered on behalf of the nonblockading powers. It is too narrow a view to take. The very object of the arbitration is that the court may appreciate the surrounding circumstances and say what is proper to be done. The blockading powers were claiming a preference; Venezuela, as represented by Mr. Bowen, was refusing it. That question on which the parties can not agree, and on which, therefore, they can not draw up any formal instrument, such as M. Woeste seemed to dissiderate [sic], has to be decided by this tribunal. And on which materials? M. Woeste says you are to look at nothing but the protocol itself. If you find it in the bond, then the blockading powers are to have preferential treatment. What an idle reference it would be! Can it be imagined that any grown men should spend their time in drawing up protocols of reference when there was nothing to refer? What the tribunal has to do is to look at the circumstances which preceded and attended the drawing up of these protocols, and if it appears that the blockading powers had throughout been insisting on adequate security for prompt payment, and that Venezuela had expressed her acquiescence in that demand without reserve, and if an attempt is afterwards made to bring in the other powers to share in the 30 per cent which is to be provided, surely the question which then arises, and which has to be decided, is one which can not be decided without reference to the antecedent history of the case. For that reason I desire very shortly to review the statement made upon this point by my friend M. Clunet. He entered, in his statement on behalf of Spain, at some length into the question of what the effect of the negotiations was; and while I desire, as far as possible, to avoid repetition, I feel bound to go over the ground which M. Clunet traversed for the purpose of showing that he has overlooked, in that review which he made, some most important features of the case. The documents to which I have occasion to appeal are not many in number, and I shall read only the material sentences.

The first is the dispatch of the 18th December, No. 198 in the British Blue Book, at page 177, where Lord Lansdowne says, writing to Sir Michael Herbert:

I informed the United States chargé d'affaires this afternoon that the cabinet had decided at its last meeting on the 16th to accept, in principle, the idea of settling the Venezuelan dispute by arbitration, and we had since ascertained that the view of the German Government was in accord with our own. We considered, however, that some of our claims were of such a kind that we could not include them in the reference.



That was, of course, in answer to the proposal that had been made for arbitration through Mr. White, the chargé d'affaires of the United States, on the 13th December. And on the same day, the 18th December, Lord Lansdowne, in writing to Sir F. Lascelles in a Document No. 199 on the same page (page 177) uses this expression:

The claims which rank first are not in the present shape suited for settlement by arbitration. These claims which, as far as Germany is concerned, represent the demands of German subjects in connection with the Venezuelan civil wars of 1898-1900, and which are specified in the memorandum presented to the Reichstag, must, therefore, be immediately recognized by the Venezuelan Government. In case the latter should be unable to meet these demands immediately, reliable guaranties must at least be given for a speedy payment.

In that paragraph Lord Lansdowne states the views of Germany, as communicated by the German representative, and then in the next paragraph he goes on to say:

All further demands contained in the two ultimatums shall be submitted to the proposed court of arbitration. The latter will, therefore, have to consider not only the claims in connection with the present Venezuelan civil war, but also, as far as Germany is concerned, the demands mentioned in the memorandum laid before the Reichstag of German subjects arising from the non-fulfilment of liabilities incurred by contract by the Venezuelan Government. The court of arbitration will have to decide both on the material justification of the demands and on the ways and means of their settlement and security.

There is defined, as clearly as words can define it, the position of the German Government, which was acting in concert with the British Government on this point. And then at the end of the letter he says this:

I was able, later in the afternoon, to inform his excellency that the cabinet agreed to arbitration as a means of settling the dispute, subject to the following reservations which he undertook to communicate to the German Government—and then follow the terms as to the shipping claims and so on and the other claims and the method of arbitration.

The formal answer to Mr. White's overtures of the 13th December is dated the 23d December, and will be found at page 183 of the British Blue Book, No. 209. And would the tribunal allow me just to mention in passing that this memorandum was communicated to Mr. White, the chargé d'affaires of the United States, and was sent on by Mr. White to Mr. Hay, and then by Mr. Hay, the Secretary for Foreign Affairs of the United States, was communicated to Mr. Bowen—a fact which appears from the Venezuelan appendix at page 155, and which, I venture to think, is not at all immaterial in considering the question with which I shall have to deal presently of the attitude of the United States. The Venezuelan appendix page 155, shows that this dispatch was communicated by Mr. White to Mr. Hay, and by Mr. Hay to Mr. Bowen.



In this reply to the overtures made on the 13th December by Mr. White on behalf of Venezuela, His Majesty's Government say this:

The Venezuelan Government have during the last six months had ample opportunity for submitting such a proposal—

and then it goes on in the following paragraph:

His Majesty's Government have, moreover, already agreed that in the event of the Venezuelan Government making a declaration that they will recognize the principle of the justice of the British claims, and that they will at once pay compensation in the shipping cases, and in the cases where British subjects have been falsely imprisoned or maltreated, His Majesty's Government will be ready, so far as the remaining claims are concerned, to accept the decision of a mixed commission, which will determine the amount to be paid and the security to be given for payment. A corresponding intimation has been made by the German Government.

And then at the bottom of the page:

It would, in the opinion of both Governments, be necessary that the arbitral tribunal shall not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

Now, there is a most pointed statement that both Governments will require that, in the event of arbitration being consented to, there should be not only a decision as to the amount, but also as to the security to be given by Venezuela and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

And let me go back three days for the purpose of calling attention to what Mr. Bowen said on the 20th December. I read this document of the 23d December in the order in which I did, because it completed the story with regard to Mr. White's overtures of the 13th December; but in the meantime, on the 20th December, Mr. Bowen had made a statement, which will be found in the Venezuelan appendix at pages 153 and 154, from Mr. Bowen to Mr. Hay. It is a paraphrase of a telegram. It begins by stating some objections to arbitration at The Hague, and goes on:

Mr. Bowen believes that Venezuela would be satisfied to pay a good sum in cash at once to the three powers, and would agree that a mixed commission should settle the amounts to be paid on claims, and that Venezuela would furnish ample guaranty that payments of such amounts will be promptly made.

Now, can words be clearer:

Mr. Bowen believes that Venezuela would be satisfied to pay a good sum in cash at once to the three powers, and would agree that a mixed commission should settle the amounts to be paid on claims, and that Venezuela would furnish ample guaranty that payment of such amounts will be promptly made?

That must refer to the three powers.

Mr. Bowen states that in the exercise of the full powers given to him he may decide that in the interests of Venezuela it is better to accept at once and in full the ultimatums of the three powers than to leave the matter to the tribunal at The Hague.

And so on. There, again, we have as clearly as it can be stated in words that the question was one of supplying guaranty to the three powers for prompt payment. This is Mr. Bowen's attitude, and that is Mr. Bowen's statement upon the 20th December.

On the 1st January the reply of President Castro comes—it is No. 215 in the British Blue Book at page 186, where Mr. White, who, in this matter, was acting in the interests of peace between Venezuela and Great Britain, writes to Lord Lansdowne:

I have the honor, in accordance with instructions from my Government, to communicate to your lordship the following copy of a telegram which was received yesterday by Mr. Secretary Hay from Mr. Bowen, American minister to Venezuela: "I have received the following answer from the President of Venezuela: 'I recognize in principle the claims which the allied powers have presented to Venezuela. They would already have been settled if it had not been that the civil war required all the attention and all the resources of the Government. To-day the Government bows to superior force, and desires to send Mr. Bowen to Washington at once to confer there with the representatives of the powers that have claims against Venezuela, in order to arrange either an immediate settlement of all the claims, or the preliminaries for a reference to the tribunal of The Hague, or to an American Republic to be selected by the allied powers and by the Government of Venezuela. Mr. Bowen would be duly authorized to settle the whole question as the Representative of Venezuela.'"

Now, it was stated yesterday that mention is made there of "an immediate settlement of all the claims," but I very respectfully ask the tribunal to put itself in the place of those to whom that communication was made, and to ask whether the fair and natural meaning that such a document would convey is not this: "We are engaged in the settlement of your claims—that is, the claims of the three powers, the allied powers;" and the reason for that meaning being conveyed is simply that the telegram begins by recognizing in principle the claims which the allied powers have presented to Venezuela, and it ends by a suggestion for reference to an arbitrator to be chosen by the allied powers and the Government of Venezuela. The question is what meaning would that document convey? Surely, although you find in the middle of it that phrase which has been commented upon so much, "all the claims," anyone getting under such circumstances a document of this kind, beginning as it does and ending as it does with a reference to the allied powers, the claims of the allied powers against Venezuela and the selection of an arbitrator by the allied powers would have understood that what was in view was the claims of the allied powers against Venezuela.

On the 5th January, in the Document No. 222, at page 191 of the British Blue Book, Lord Lansdowne asks that President Castro should specifically accept the conditions of His Majesty's Government. This is a point of crucial importance, and I ask leave to read two or three sentences from this dispatch near the bottom of page 191:

His Majesty's Government observe with satisfaction President Castro's statement that he recognizes "in principle" the claims which they have put forward. His Majesty's Government understand this statement to signify that President Castro agrees, on the part of the Venezuelan Government, that any discussions in which Mr. Bowen, as the representative of that Government, is to engage at Washington with the representatives of His Majesty's Government are to proceed upon the assumption that the Venezuelan Government unreservedly accept and agree to be bound by the conditions laid down in the memorandum of the 23d December, 1902, which run as follows:

Then I need not read the first and second paragraphs or the third at the top of page 192; they are in the minds of the tribunal. But then, at the top of page 193 it goes on thus:

It would, in the opinion of both Governments [British and German] be necessary that the arbitral tribunal should not only determine the amount of compensation payable by Venezuela, but should also define the security to be given by the Venezuelan Government and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation.

Now, there is an expression in the most explicit terms of what the conditions of His Majesty's Government were: The tribunal to define "the security to be given by the Venezuelan Government, and the means to be resorted to for the purpose of guaranteeing a sufficient and punctual discharge of the obligation." Of what obligation? Of the obligation to the allied powers. And then Lord Lansdowne goes on:

On receiving a definite assurance from President Castro that this interpretation of his language is accepted by him as correct, and that whatever procedure be adopted adequate provision will be made for the prompt satisfaction of the claims specified in paragraph (1), His Majesty's Government will be prepared to authorize His Majesty's ambassador at Washington to confer on this basis with Mr. Bowen as the representative of the Venezuelan Government, and will furnish Sir M. Herbert with the necessary instructions for examining the possibility of an immediate settlement, or, failing such a settlement, for arranging a reference of all points left open for arbitration to the tribunal at The Hague.

There it is, on the same basis, on the basis of these conditions—that if President Castro, who had agreed in principle to the demands of His Majesty's Government, should agree definitely to the explicit statement there made of what these conditions were, the negotiations were to go on upon this basis.

On the 6th January Mr. Bowen makes a communication, which appears at page 160 of the Venezuelan appendix, beginning at page 159 and going over to page 160. It is a paraphrase of a telegram from Mr. Bowen to Mr. Hay, sent from Caracas on the 6th January,

and I venture to think that its terms in this connection are of great importance. I begin with the second sentence: "He reports"—this is Mr. Bowen reports—"that President Castro has done all in his power to come to a fair agreement with the allied powers; that he has been ready and anxious to settle his controversy with them; that he has believed that if he could send a representative to Washington to confer with diplomatic representatives there of the allied powers his representative could convince them that the terms he has to offer are reasonable and would be so satisfactory that it would be unnecessary to carry the controversy to The Hague; that the claims against him are purely commercial in character; that he acknowledges that he must pay such of them as are just; that he would have preferred to wait before paying them until he had reestablished peace in Venezuela, but since the allied powers have declared he must yield to their demands, he feels that he is obliged to bow to superior force. Mr. Bowen further says that President Castro, under the foregoing circumstances, desires a speedy settlement of the controversy so as to put an end to the blockade of his ports, which deprives him of paying the expenses of his Government, and which is oppressive to his people and to all foreigners residing in Venezuela." And then follows this sentence, to which I venture to direct particular attention: "President Castro thinks it strange that, as he is willing to pay what he owes and to offer a good guaranty that he will satisfy his creditors, he should not be allowed to come to an agreement with them without delay, but is forced to carry the controversy before the tribunal at The Hague." Now, what does this telegram mean? Surely the creditors there spoken of are the powers with whom all the earlier part of the dispatch was dealing. It goes on:

President Castro has the greatest respect for that tribunal, but does not see why he should be forced to submit a controversy to it which could be settled at Washington quickly, easily, and at little expense. A proposition to settle in civil cases being always in order before the court renders its judgment, President Castro thinks that, as this is essentially a civil case, the allied powers should at least give his representative a courteous hearing; but if they are indisposed to do so, and insist on The Hague, he feels that they ought to raise their blockade the moment he binds himself to abide by the decision of that tribunal. As he represents a weak nation and can not enforce his views, he trusts to the Government at Washington to use its good offices to secure just treatment for him.

I respectfully call attention to the whole of that communication, and more particularly to the sentence in which Mr. Bowen says that President Castro is willing to offer a good guaranty that he will satisfy his creditors. That must be the creditor powers who had instituted the blockade, because the whole dispatch is dealing with them, and the object is to get the blockade raised.

Three days after that comes the communication of the 9th January, No 228 in the British Blue Book, at page 194. This was received on the 9th January. I think that the telegram, as appears elsewhere—I shall be corrected if I am wrong—was sent off from Caracas on the 7th January. Mr. White writes on the 9th to Lord Lansdowne:

I have the honor, in accordance with instructions from my Government, to communicate to your lordship the copy of a telegram which was received yesterday morning by Mr. Secretary Hay from Mr. Bowen, the American minister at Caracas: "I have just received the following from President Castro: 'Mr. MINISTER: The Venezuelan Government accepts the conditions of Great Britain and Germany, and requests you to go immediately to Washington for the purpose of conferring there with the diplomatic representatives of Great Britain, Germany, and with the diplomatic representatives of the other nations that have claims against Venezuela, and to arrange either an immediate settlement of the said claims or the preliminaries for submitting them to arbitration.—Cipriano Castro, Constitutional President.' (Confidential.) If, as I understand, Great Britain and Germany want to know what guaranty they will have, please inform them that it will be the custom-houses; consequently I beg that the blockade be raised at once."

M. Clunet exercised his wit upon this dispatch, and said that we wish to attribute to this postscript the virtue that is attributed to a lady's postscript sometimes, of containing matter much more important than that in the body of the letter, and matter which may overrule that, and even contradict it. Well, one has heard of that before, but I venture to say that Mr. Bowen did not act on the principle of the lady, and he was not engaged in an amatory correspondence. His postscript is thoroughly in consonance with the whole tenor of the negotiations that had taken place between him and those who represent the blockading powers. What he had been engaged in endeavoring to do in the interests of Venezuela was to get rid of the blockade, and for that purpose he was offering to the blockading powers a guaranty for prompt payment of the claims which are now in question; and when he says in this telegram that the Venezuelan Government accepts the conditions of Great Britain—that is what he says at the beginning of the telegram which he communicates from President Castro, and that is what he says at the end in his own postscript, that Great Britain and Germany, if they want to know what guaranty they will have, are to be informed that it will be the custom-houses; surely that indicates what the meaning of this communication was.

Now, we are told that all that is to be thrown to the wind, and that the beginning and end of this dispatch are to be overruled by what appears in the middle—that Mr. Bowen was to communicate not only with the representatives of Great Britain and Germany, but also with the representatives of the other powers that might have claims against Venezuela. What does it matter to the representatives of the blockading powers that Mr. Bowen may have a commission to confer with the representatives of other powers as well? As long as



they are to get a good guarantee for prompt payment of their claim, they have no reason to object to Mr. Bowen conferring also with the representatives of other powers. The question is now whether they are to have that good, sufficient, and adequate guarantee for prompt payments.

Now, we have heard a good deal about the two sets of powers which were conferred upon Mr. Bowen by the Government of Venezuela. The first appear at page 152 of the Venezuelan appendix and the second appear at page 162. The first conferred upon Mr. Bowen "full powers to enter negotiations to settle in the most favorable manner possible to the interests of the Republic the present difficulty which has arisen with the United Kingdom of Great Britain, the German Empire, and the Kingdom of Italy"—that was dated the 18th December. The second, which is dated the 7th January, conferred upon Mr. Bowen full powers "to effect at Washington with the diplomatic representatives of the nations that have claims against Venezuela the immediate settlement of them, or the preliminaries for the submission to arbitration of such of them as can not be settled immediately." The first relates to the blockading powers; the second relates to all the powers.

Now, it is said that the first power was not left with the representatives of the blockading powers. Well, I confess it is with some surprise that one hears such an observation, when we look at the documents Nos. 203 and 204 in the British Blue Book at page 180. It will be recollected that in this matter Venezuela was availing herself of the friendly offices of Mr. White, the chargé d'affaires for the United States in London, acting in the absence of the ambassador. On the 19th December, Mr. White writes to Lord Lansdowne:

I have the honor to inform your lordship that Mr. Bowen, the American minister at Venezuela, has informed my Government by telegraph that the Venezuelan Government has conferred upon him full power to enter into negotiations on the part of Venezuela to settle the present difficulties with Great Britain, Germany, and Italy. I am instructed by Mr. Secretary Hay to communicate the Venezuelan proposition to your lordship, and to ascertain whether His Majesty's Government be disposed to assent thereto.

And on the same day Lord Lansdowne writes back to Mr. White (No. 204, on the same page, 180):

I have had the honor to receive your note of to-day's date, informing me that Mr. Bowen, the American minister at Caracas, had informed the United States Government that the Venezuelan Government had conferred upon him full powers to enter into negotiations on the part of Venezuela to settle the present difficulties with Great Britain, Germany, and Italy. His Majesty's Government have, as you are aware, already accepted the proposal of the Venezuelan Government to refer to arbitration the matters in controversy between the two Governments, and have expressed their hope that the President of the United States will consent to act as arbitrator. The conditions under which that arbitration might take place have been fully considered, and I hope very shortly to make



you aware of them. In these circumstances, His Majesty's Government prefer not to abandon the proposals which they have already made, proposals which seem to them to afford every hope of a satisfactory settlement, in order to adopt the alternative procedure which the Venezuelan Government have apparently now suggested.

Under those circumstances, what is the use of telling us that the powers which appear on page 152 of the Venezuelan appendix were not served upon the representatives of the blockading powers?

Mr. BOWEN. Will you just allow me one minute? You show, by your own paper, by what you have read just now, that you did not accept those powers—that you repudiated them.

The ATTORNEY-GENERAL. That is not a correction; that is in the nature of an attempted reply. The observation I was dealing with was this: We were told that the powers appearing on page 152 were not communicated to the representatives of the blockading powers. I speak in the recollection of the tribunal—that was the point made by Mr. Bowen, by way, I think also, of interruption, when we were dealing with this subject now some five days ago. He got up and said that this power on page 152 ought not to have been referred to, because it was not served upon the blockading powers. But here I have shown that it was. Mr. White was acting for Venezuela. Mr. White received from Mr. Secretary Hay an intimation of what this power was; he is directed by Mr. Secretary Hay to inform Lord Lansdowne, and Lord Lansdowne acknowledges the receipt of his communication. To what purpose is it to tell the tribunal, as Mr. Bowen has just done by his interruption, that Lord Lansdowne did not accept the proposal for settlement instead of arbitration? That is not the question. The question that we are now upon is whether in this matter Mr. Bowen was immediately concerned to effect a settlement with the blockading powers with a view of getting rid of the blockade. It is a perfectly irrelevant point that Lord Lansdowne said, after receiving that communication, "I prefer to adhere to the way of arbitration." The whole point is that His Majesty's Government were officially informed by Mr. White, under the direction of Mr. Secretary Hay, of what the powers were which were conferred upon Mr. Bowen on the 18th December, and which appeared in this document on page 152 of the Venezuelan appendix.

And I am reminded by my learned friend Mr. Cohen of an observation which is well worthy of the attention of the tribunal, that this Document No. 204, from Lord Lansdowne to Mr. White, contains the statement that His Majesty's Government had expressed their hope that the President of the United States would consent to act as arbitrator. Was the President of the United States to act as arbitrator in a matter affecting the United States as a nonblockading power? The question must have been a question as between Venezuela and Great Britain, and that is the question on which Lord

Lansdowne says that he should be perfectly willing, on behalf of Great Britain, that the President of the United States should act as arbitrator.

Then we come to the second powers with which Mr. Bowen was armed, which are dated the 7th January, and are found at page 162 of the Venezuelan appendix. That gives to Mr. Bowen full powers "to effect at Washington with the diplomatic representatives of the nations that have claims against Venezuela, the immediate settlement of them or the preliminaries for the submission to arbitration of such of them as can not be settled immediately." That, of course, is expressed in perfectly general terms; it is "to effect with the representatives of the nations that have claims against Venezuela." The nations which particularly had claims against Venezuela, and which Venezuela was concerned to deal with as soon as she could, were the blockading powers, because what Venezuela was anxious to do was to get rid of the blockade. And I should add what I am reminded of, that that document on page 162 was shown—I think Mr. Bowen stated it—was served upon the representatives of the blockading powers on the 24th January, and not till then. Under those circumstances I venture to appeal very respectfully to my friend, M. Clunet, whether he will not, before he comes to reply on behalf of Spain, reconsider the conclusion which he submitted. After referring to those documents—not referring to them as completely as I have endeavored to do—he submitted that the whole effect of the negotiations showed that, from the first, Venezuela insisted upon dealing with all the powers; but whatever Venezuela may have intended with reference to settling with all her creditors, what we know is that what Venezuela was anxious to do was to get rid of the blockade, and that for that purpose it was necessary, as Venezuela was informed in the plainest terms, to provide adequate security for prompt payment, either directly or by leaving it to the tribunal of arbitration.

And then there are two other documents to which I ought to refer in this connection; they are Nos. 236 and 237 at pages 215 and 216 of the British Blue Book. In both of these documents Lord Lansdowne distinctly states that he could not authorize the British representative to enter into a general discussion with the representatives of the other powers. No. 236 is at the bottom of page 215; it is dated the 15th January, and is a dispatch from Lord Lansdowne to Sir F. Lascelles. He says that he had had some conversation with the German ambassador with regard to the action to be taken on the communication made on the 9th, and refers to the communications that had been held with the chargé d'affaires of the United States; and then at the middle of page 216 occurs this passage:

His excellency [that is, the German ambassador], called my attention to the fact that President Castro's letter apparently contemplated that Mr. Bowen

should confer, not only with the representatives of Great Britain and Germany, but with those of all other nations having claims against Venezuela. His excellency regarded this intimation with some alarm. I said that it seemed to me that the blockading powers stood on an entirely different footing from the rest, and that, in my view, it would be impossible for us to allow our representatives to take part in a general discussion at which a number of other powers would also be represented.

That sentence is an extremely important one, and I think it escaped the attention of Judge Penfield when he was referring to this dispatch, but it must be read in connection with what immediately precedes it, because it is a distinct intimation that Lord Lansdowne regarded the blockading powers as standing on a different footing from the rest, and that it would be impossible for their representatives to take part in a general discussion at which a number of other powers should be represented. And in the next document, No. 237, at the bottom of page 216, in writing to Sir Michael Herbert, Lord Lansdowne says:

His Majesty's Government are not prepared to join in a general discussion with other powers as to the questions at issue with Venezuela, and your excellency must make it clear to Mr. Bowen that you are authorized to discuss with him only the British claims, and the proposals which he may offer for their liquidation.

Now the next document, to which I shall only refer because it has been read already—but it wants emphasizing, in view of what has been said since on behalf of Spain in the way of opening, and, in reply, on behalf of France—is the document of the 13th January, containing the instructions from Lord Lansdowne to Sir Michael Herbert; it is No. 234 in the British Blue Book, at page 209. It is a very long document. It recites the history of the transaction; it recites on page 211 the telegram from President Castro, received on the 1st January; at the middle of the page it recites the telegram from Mr. Bowen, received on the 9th January, and then it goes on: "I have now to give your excellency the following instructions." I need not trouble with most of the details of these instructions, but on page 212, in the second paragraph, there occurs this passage: "Other claims for compensation, including the railway claims and those for injury to, or wrongful seizure of, property, are estimated at amounting to about £600,000. His Majesty's Government will be ready to accept, in satisfaction of these claims, either a sufficient cash payment or a guarantee, based on security which must be adequate, and which the Venezuelan Government must be bound not to alienate for any other purpose;" and he gives a résumé of his instructions at the bottom of page 212, where he says: "Other claims for compensation," etc., "must be met either by an immediate payment to His Majesty's Government or by a guarantee adequate in your opinion to secure them. These claims can, if this be desired, be examined by a mixed commis-

sion before they are finally liquidated." There, again, is a most explicit statement that there must be, for the British claims, either a sufficient cash payment or a guarantee based on security which must be adequate. And I should read another sentence, as I am reminded by my learned friend, Mr. Cohen, on page 213, where Lord Lansdowne goes on to say: "On learning that the negotiations have resulted in an agreement fulfilling the above conditions, His Majesty's Government will at once give orders that the blockade of the Venezuelan ports by His Majesty's ships shall be raised." How can it be said in the face of that that the British Government were not insisting upon adequate security for the payment of their claims? With other powers they were not concerned. They were acting in concert with the blockading powers. Whatever arrangement Venezuela might choose to make with the nonblockading powers was made for Venezuela and for them, but what the British Government were insisting upon was that adequate security should be given for the satisfaction of the British claims.

Then, on the 20th January, Mr. Bowen reached Washington, and he asked that the blockade should be raised. On the 21st January, 1903, Lord Lansdowne sends a document, which is No. 239 in the British Blue Book, at page 217; it is a telegram from Lord Lansdowne to Sir Michael Herbert: "With regard to your excellency's telegram of to-day, you will see from your instructions that the fulfillment of certain conditions is required before His Majesty's Government will consent to the blockade being raised." What were the instructions there referred to? They are manifestly the instructions of the 13th January, to which I have just been calling the attention of the tribunal, and which concluded in the sentence near the end, which I read at my learned friend's, Mr. Cohen's, request, stating that the blockade would be raised on these conditions being complied with, and when Sir Michael Herbert was referred, on the 21st January, when Mr. Bowen applied, on his arrival at Washington, for the raising of the blockade, to his instructions as to the fulfillment of certain conditions. Those conditions, as the tribunal know, included the provision of sufficient security for the British claims, which form the subject of the present inquiry.

Then, on the 23d January, Mr. Bowen sends an intimation, which appears at page 164 of the Venezuelan appendix, and which, I think, must have escaped the industry of my friend M. Clunet, for, so far as my memory serves me, he did not refer to it, and he could hardly have had it in his mind when he made the statement as to the claim for preferential treatment, separate treatment not being pushed. Mr. Bowen, on the 23d January, writes in these terms:

DEAR SIR MICHAEL: In answer to your letter of to-day, stating the conditions on which Great Britain will raise the blockade of the Venezuelan ports, I have

the honor to inform you that I accept those conditions, as they are substantially the same as those already accepted by the Venezuelan Government.

Now, what are those conditions? They appear in the letter from Sir Michael Herbert to Mr. Bowen of the same date, the 23d January, which immediately precedes the document I have read; it begins at the bottom of page 163 of the Venezuelan appendix, and the second paragraph at the top of page 164 states:

The other claims for compensation, including railway claims and those for injury or wrongful seizure of property, must be met by an immediate payment to His Majesty's Government or by a guaranty adequate to secure them. These claims can be, if desired, examined by a mixed commission. An arrangement must be entered into to satisfy the claims of the bondholders, including a provision for definite sources of payment. There must be an exchange of notes between His Majesty's Government and that of Venezuela, renewing the convention of the 29th October, 1834. On learning that the negotiations have resulted in an agreement fulfilling the above conditions, His Majesty's Government will at once give orders that the blockade of Venezuelan ports shall be raised.

On receiving that letter Mr. Bowen writes back: "I accept those conditions," and that acceptance was communicated by Sir Michael Herbert to Lord Lansdowne in the Document No. 240 in the British Blue Book.

But, then, there ensues this noteworthy incident: On the same day Mr. Bowen leaves with Sir Michael Herbert a statement which appears on page 163 of the Venezuelan appendix; it is dated the 23d January and headed "Statement left in the hands of Sir Michael H. Herbert," and it contains this proposal:

Mr. Bowen proposes that all claims against Venezuela shall be paid out of the customs receipts of the two ports of La Guaira and Puerto Cabello, the percentage to be 30 per cent each month of the receipts. In case of failure on the part of Venezuela to pay the said 30 per cent, the creditor nations will be authorized to put, with the consent and without opposition on the part of Venezuela, Belgian customs officials in the said two custom-houses, and to administer them until the entire foreign debt is paid:

Well, Lord Lansdowne, on being informed of that communication, very naturally requires further explanation, and in the Document No. 241, dated the 24th January, at pages 217 and 218 of the British Blue Book, Lord Lansdowne, in the concluding sentences of this dispatch, says:

Is it proposed that the 30 per cent should be paid by monthly installments to the blockading powers only, or are the whole of the creditor powers also to share the benefit? We shall be quite ready to accept the security proposed by Mr. Bowen if he can supply statements showing that he offers guaranties adequate in amount, and we shall be prepared to urge the German and Italian Governments to accept it.

Of course. It did not matter, if the security was adequate, whether other nations were to be secured also; but it was essential that ade-



quate security, on which the British Government had insisted from the first, should be given for the British claims.

Then, on the 25th January, Lord Lansdowne was informed by the Document No. 244 in the British Blue Book, on page 219, that the proposal was that all the powers should share in the 30 per cent, and in Document No. 245, dated the 26th January, Lord Lansdowne says, after referring to the figures: "It is understood that £213,000 is the sum which 30 per cent of the customs of the two ports would yield." Then he mentions the amount of the claims and so on, and says:

If only £213,000 a year is available, it is obvious that many years will elapse before the whole of the above liabilities are extinguished. In these circumstances the interest of the creditors would be far from assured, considering the insecurity of affairs in Venezuela. We consider that the claims of the powers engaged in the blockade should not rank on the same line with other claims for compensation or by bondholders, and that some special arrangement should be made with regard to the former. A portion of the revenue of the two ports might possibly be set apart under an arrangement by which the extinction of British, German, and Italian claims within, say, five years, would be provided for. It is presumed that this could be arranged without the other creditor powers, whose interests we have undertaken to respect, being injuriously affected.

That, of course, refers to the undertaking which had been given by Lord Lansdowne that the vested rights of France and Belgium in regard to certain portions of the customs securities over which they held under previous arrangements were not to be interfered with.

On the 27th of January, and on the 29th of January, Mr. Bowen gave his reasons for asserting that all the powers ought to have the same treatment; these documents appear at pages 167 and 168 of the Venezuelan appendix; they are the documents in which Mr. Bowen says that he can not consent to preferential treatment, because if the matter were referred to The Hague all the creditor nations would be put on the same footing; and then in the next communication, which is dated the 30th January, he objects on three grounds, that it would tie the hands of the other nations for five or six years; that he could not recognize that "brute force" alone can be respected in the collection of claims; and that if the allied powers wanted preferential treatment they should have asked for it in the beginning, and not proposed it after he understood clearly that all the conditions of the allied powers had been stated. I have commented upon these documents, and I need not repeat what I said with regard to them. I submit that the suggestion that the allied powers were putting forward a new condition is entirely unfounded. The allies have throughout been insisting on adequate security, and it was only when Mr. Bowen brought forward the proposal that the other powers should share in the 30 per cent that Lord Lansdowne, very naturally and very properly, says: "If the other powers are to come in on the 30



per cent then we must have preferential treatment, because we should not have adequate security in that case." I submit that the point is so clear that further comment is unnecessary, and that the suggestion here put forward that if the allied powers wanted preferential treatment they should have asked for it in the beginning, is an observation which lacks all point; it is an attempt at a suggestion that the allied powers were changing their ground. In fact the allied powers were keeping the same ground; the ground had been changed, but not by the allied powers. When it was proposed to bring in on the 30 per cent the nonblockading powers, Lord Lansdowne very properly said: "We must then do this—either have preferential treatment or security which will be adequate."

Then, on the 29th January, in Document No. 254, on page 222 of the British Blue Book, Lord Lansdowne says to Sir F. Lascelles:

I told his excellency that it seemed to me worthy of consideration [that is in reference to an interview with the German ambassador] whether, if a part of the customs revenue was appropriated, not for the satisfaction of the claims of all the creditor powers, but for that of the British, German, and Italian claims alone, we might not be content with rather less than the full 30 per cent referred to. It seemed to us that the allocation of an annual sum sufficient to extinguish our claims in, say, six years might be enough for our purpose, and we had instructed Sir M. Herbert to discuss the question with his German and Italian colleagues.

And the next document, No. 255, on page 223, Lord Lansdowne, writing to Sir Michael Herbert, uses this very clear and emphatic language:

It seems that Mr. Bowen has not thought it possible to come to any arrangement which would not place on precisely the same footing all the powers who have claims for compensation from Venezuela. This is, in the opinion of His Majesty's Government, quite at variance with international practice and with principles of equity, and, except at the instance of some competent tribunal of arbitration, they could not assent to it. It must be remembered that neither the President of the United States, in his communications with His Majesty's Government, nor any of the blockading powers, nor, so far as I am aware, President Castro, have ever put forward a proposal of this nature. The preferential treatment for which the blockading powers have asked is not, it must be further remembered, one by which either the resources at the disposal of the Venezuelan Government for the payment of the external debt would be exhausted, or by which the so-called "diplomatic debt," which amounts to only 5.2 per cent of the total customs revenue of Venezuela, would be interfered with. The other powers will, without doubt, under the arrangements proposed by the blockading powers, be in a much more favorable position than they ever were before, and that, too, without incurring any of the trouble or expense involved in the naval operations which have been undertaken.

On the 2d of February Mr. Bowen replied, refusing to give preferential treatment; the document is at page 168 of the Venezuelan appendix; I need not read it. It is enough to say that he said that it would involve the admission of the principle that preferential treat-

ment could be rightly obtained by blockades. But he proposed a reference on this point to the tribunal at The Hague. The British Government were insisting on their rights which Mr. Bowen refused to accede; that question comes before the tribunal at The Hague, and now, forsooth, we are told that His Majesty's Government have abandoned their claims to preferential treatment.

MEETING OF NOVEMBER 12, 1903.

The ATTORNEY-GENERAL. May it please the tribunal, I had yesterday before the adjournment called attention again to the history of the negotiations which led up to the protocol, by way of supplying some omissions in the statement of the case which was before the tribunal on behalf of the powers who did not join in the blockade. I submit that these documents, when they are looked at in their entirety, establish the first proposition on which I rely for preferential treatment on behalf of the blockading powers, which is that, throughout the negotiations, Great Britain insisted upon adequate security, and as soon as the proposal was made to bring in the other powers with reference to the 30 per cent, Great Britain objected on the ground that it would interfere with her creditors having adequate security, and insisted on that matter being referred to the tribunal at The Hague.

Now, if it be the case that Great Britain insisted on adequate security and Venezuela agreed to give adequate security, then I put it to the tribunal that it is impossible for the tribunal to avoid giving preferential treatment to the blockading powers, for this reason, that unless preferential treatment be given, the security will not be an adequate security.

Judge Penfield stated that it had not been established that the security would be inadequate if the powers who did not join in the blockade were admitted to share equally in the proceeds of the 30 per cent of the customs of these two ports. It is impossible, of course, to have any complete demonstration on this point until the results of the labors of the mixed commission have been communicated to the tribunal. The tribunal can not act on any imperfect statement with regard to the amount of the claims allowed. Any statement at present must necessarily be imperfect, because the work of the mixed commissions will not be completed for some time. But I submit that there is every reason to believe that if the other powers are admitted, the security will not be adequate for the blockading powers—in this sense, that it will postpone payment of those claims for a considerable time, and postpone payment under circumstances which, having regard to possibilities in Venezuela, may result in the blockading powers not receiving payment at all.

As regards the amounts yielded by 30 per cent of the customs of La Guaira and Puerto Cabello, they were estimated during the negotia-

tions by Mr. Bowen at £213,000 a year—I think that is the figure. The amount actually received during the six months that elapsed after the security began to operate was only £85,000, and at that rate the security would yield in the year only £170,000, instead of the £213,000 put upon it at the time of the negotiations. The amount received may, of course, fluctuate; it may depend upon events in Venezuela. It is possible that if peace be established in Venezuela, and “commerce flourishes,” the receipts from these customs may rise in amount; it is also possible that if, unfortunately, Venezuela should be afflicted by a continuance of those unfortunate disturbances which have marked her history, the receipts from these customs might go down. The whole thing is a matter very much of speculation. The only piece of solid fact that we have at present is that, at the rate at which receipts have come in since the security took effect, it would yield about £170,000 a year.

Then we have, of course, the amounts of the claims which have been allowed, and the amounts of the claims which are still outstanding. I do not know far the figures that we had are modified by the telegram which Mr. Bowen has read this morning. Up to the date of the receipt of that telegram, I think the amount of the claims allowed had been £820,000 in all, and there are still outstanding claims to something like £3,000,000. The new figures make no very material difference, for I think they only come to about £4,000, and the claims put forward on behalf of the blockading powers I think amount, roughly, to about one-fourth of those put forward by the nonblockading powers. Speaking roughly, it is not necessary, and I do not pretend to be absolutely accurate in a matter of that kind, they amount to about one-fourth of the claims put forward by the nonblockading powers.

On those figures I submit to the tribunal that there is every reason to suppose that if the blockading powers have to share *pari passu* with the other powers, the security is one which will not be adequate, because it would take a very long time to liquidate the claims of the blockading powers, and owing to the possibilities which are latent in Venezuela it is possible that these claims might never be liquidated at all. Judge Penfield spoke of the security afforded by the customs of La Guaira and Puerto Cabello, as being a stable security. Well, as long, of course, as government is properly maintained in Venezuela these customs do afford a good security, but the stability of the security must depend, to a very great extent, upon the stability of the institutions of Venezuela, and that is a matter on which there may be room for difference of opinion. At all events, even if the security is never interfered with until all the claims have been paid off, I submit that there is every reason to believe that the payment of the claims of the blockading powers would be postponed for an unduly long time if the other powers were admitted to compete.

By the time when the mixed commissions have completed their labors the actual amount of all the claims will be known, and if it were necessary to be very precise upon this matter I apprehend that the tribunal could not proceed upon such imperfect materials as are at present before us, and would require to have a duly authenticated statement by the mixed commissions as to the amount of the claims; the value of the security, on the other hand, must be always more or less a matter of speculation, because, whatever the amount yielded in the year at present may be, how long that yield will continue must be a matter involved in considerable obscurity. But I do submit to the tribunal that quite enough appears to lead the tribunal to the conclusion that if the nonblockading powers are admitted the blockading powers will not have that which they insisted upon from the first, and that which Venezuela stated her willingness to give—an adequate security for prompt payment of their claims.

That is the first ground on which I submit that the right to preferential treatment has been established.

The second ground is this, that the security now under discussion of the 30 per cent of the customs of these two ports was obtained by the blockade, and by the blockade alone. The transaction speaks for itself. It was because Venezuela found it essential to get rid of the blockade that she did what she had persistently refused to do until forcible measures were taken, that is to say, signified her willingness to enter into negotiations for the settlement of the claims of the allied powers, and the eighth article of the protocol of the 13th February states, what is obvious enough without any express reference to it in that document, that the raising of the blockade was the consideration for the advantages which Venezuela was giving:

Immediately upon the signature of this protocol arrangements will be made by His Majesty's Government, in concert with the Governments of Germany and Italy, to raise the blockade of the Venezuelan ports.

It can not, I submit, be seriously contested that this security was obtained by the seizure of the Venezuelan navy, and by the establishment of the blockade, and that it would not have been obtained unless these measures had been taken. We were assured by the eloquent representative of Belgium that Belgium was in full course of negotiation in the month of January, and that Belgium would, in all probability, have obtained advantages for herself of equivalent value. All I can say is that Belgium is happy in being represented by an advocate of a very sanguine disposition. It requires a very sanguine temper indeed to believe that any such result would have been achieved, and one is almost tempted to say that the man who can believe that can believe anything.

Now, if I am correct in my submission that it is too evident for dispute, that it was by the measures of the blockading powers that

this security was obtained, is it not evident that the right to preferential treatment follows? The blockading powers did the work, they got the security, and when others claim to come in and share in the benefits, surely they must come in only after those by whose exertions alone that security has been obtained. I called the attention of the tribunal, when I opened the case of Great Britain, to the fact that over and over again in the opening on behalf of Venezuela—an opening which was not merely on behalf of Venezuela, but also on behalf of the United States, for Mr. MacVeagh said, I think, in the course of that opening, that he opened for Venezuela and the United States—over and over again it was stated that the question for the decision of the tribunal depended upon the justice or the injustice of the war. That, of course, rested upon the perception of the truth of the proposition that as the belligerent powers had obtained this security they were entitled to the benefit of it if they could show that the war was just. The same idea pervades the printed case of Venezuela, although it is not so explicitly stated. At pages 46 and 47 of that case it will be found that the learned gentlemen who signed that case—Mr. MacVeagh, Mr. Bowen, and Mr. Penfield, for all three have joined in signing this case—adhere to that statement; and the United States in their “supplementary statement,” the yellow pamphlet, which contains the argument by Judge Penfield, state their adherence to the contentions which are put forward in the other case to which I have been referring.

I have not under my hand at the moment the passage in which that adherence is signified, but I am right in saying that it was signified, and that the United States, who are putting forward a supplementary statement, adhere to the case as put forward on behalf of Venezuela, and which is signed by these three gentlemen whose names I have just mentioned. In that case it will be remembered that there is an elaborate discussion of the causes which led to Great Britain taking action. An attempt is made to minimize those causes, to explain away each case taken by itself; but, as I submit, no success whatever attends the effort to show that when the cumulative effect of these cases is regarded, there was adequate ground for war. And the case of the *Queen* is, as the tribunal is aware, omitted altogether from the consideration of this case. And then on pages 46 and 47 there occurs this passage:

Before the peace conference met there was no usage or principle which had received the assent of the civilized nations of the world which could have been invoked to prevent Great Britain, Germany, and Italy from assembling their navies in the harbors of Venezuela, and, while refusing to allow their claims to be examined, to demand at the cannon's mouth the immediate payment of such amounts of money as they thought fit to ask; but from the day the pact of peace was signed in this city by these three great nations, and an invitation was extended by them to all the nonsignatory powers to avail themselves of



the jurisdiction of this tribunal, the situation was absolutely changed. Thenceforward, in the strictest construction of the law of nations, they were bound to conduct themselves toward Venezuela in accordance with the principles they had themselves announced, and to act toward her from the beginning to the end in the spirit which permeated the members of the peace conference, and which found repeated and earnest expression in their debates as well as in the formulation of the conclusions they reached, and in announcing those conclusions to the expectant and waiting nations of the earth.

That passage, and the whole scope of the case to which I have already referred, shows that what was being submitted to the tribunal was that the causes of war were not adequate. I have, I hope, established that the causes of war were adequate, and I have established in one of the most satisfactory ways, by showing that, with reference to that act in which the proceedings of Venezuela culminated, there has not been even an attempt on the part of my honorable opponents to show any justification whatever.

But, further, the tribunal will, I am sure, appreciate that the question of the justice of the war is not one which is submitted for decision by this tribunal. If it were submitted, the case of Great Britain is amply sufficient to afford a justification. Then, if the war must be dealt with as being one based upon adequate grounds, does it not follow that as it was by the war that the 30 per cent was obtained, those who made the war are entitled to preference in the distribution of the proceeds? That is my second ground on which I say it is established that preferential treatment must be given to the blockading powers.

My third contention is that the other powers acquiesced in the action of the blockading powers, and acquiesced in the action of the blockading powers with a view to the enforcement of their (the blockading powers) own claims. The blockading powers acted upon that acquiescence, and, after such action has been taken, it is impossible for these other powers now to turn round and to say that the blockading powers are to be deprived of the advantage which they have earned by taking the action in which the other powers acquiesced.

Now, Judge Penfield devoted a good deal of attention in his argument the day before yesterday to this point, and he endeavored to extenuate the importance of the intimations that were made to the other powers, and of the acquiescence which they evinced in the proposed hostile action to be taken. He suggested that there was no acquiescence in anything that would involve preferential treatment for the blockading powers. I venture to submit that it is impossible to look at the communications without seeing that the blockading powers were intimating their intention to take action with a view to securing payment of their own claims, and that the other powers acquiesced in that action. It was put by Judge Penfield that the no-



tice given to the other powers was a notice that referred only to certain limited matters in which they had a specific interest. It will be found that the notice was a perfectly general notice of the intention to take hostile proceedings with a view to the enforcement of the claims of the blockading powers, and that the mention of certain specific matters which were reserved proceeded only from the other powers to whom that notice had been given. It was suggested that the action of the blockading powers in getting in security for the payment of their demands was analogous to a procedure by war to obtain possession of territory which was claimed by a belligerent, and that any claims by these powers to that territory could not be affected. I hope to show the tribunal that there is no analogy of the sort, and that when one creditor expresses his intention of securing payment for his claims there is no ground for saying that he is trenching upon that which belongs to other creditors of the common debtor.

These observations of Judge Penfield make it necessary for me very shortly to call the attention of the tribunal to what those communications were, and I hope by doing so to establish, beyond all controversy, my third proposition, that the blockading powers acted upon the acquiescence of the other powers in enforcing payment of their claims—that is, the claims of the blockading powers.

The communications to the United States will be found in the British Blue Book near the bottom of page 145 at No. 134; it is contained in a dispatch from Lord Lansdowne to Sir Michael Herbert, dated the 11th November, 1902:

I should wish your excellency to obtain an interview with Mr. Hay at an early date, and to make a communication to him in the following terms: His Majesty's Government have, within the last two years, had grave cause to complain of unjustifiable interference on the part of the Venezuelan Government with the liberty and property of British subjects. Every effort was made, but without result, to obtain an amicable settlement. In June last a British ship was overhauled on the high seas, and eventually confiscated, on a bare suspicion of having carried arms to Venezuela. It was felt that a continuance of such conduct could not be tolerated, and His Majesty's minister at Caracas was instructed to record a formal protest, and to intimate clearly to the President and minister for foreign affairs that unless explicit assurances were received that such incidents should not recur, and unless full compensation were promptly paid wherever shown to be justly due, His Majesty's Government would take such steps as might be necessary to exact the reparation which they were entitled to demand in these cases, as in others where endeavors to obtain redress had proved of no avail. The reply was wholly unsatisfactory, and practically ignored the remonstrances of His Majesty's Government. In view of the nature of this reply His Majesty's Government are compelled to consider what course it may be necessary to pursue in order to enforce their demands. But before proceeding to ulterior measures they have decided to intimate their regret at the manner in which their representations have been received, and to state that the serious complaints put forward can not be disposed of by a refusal to discuss them. If such a refusal is persisted in it will become their duty to consider

what steps they should take for the protection of British interests. They are, however, unwilling to exclude at once all possibility of proceeding with negotiations, and are therefore ready to consider any further communications which the Venezuelan Government may be prepared to make.

That is a perfectly general intimation to be communicated to the United States that His Majesty's Government might have to take steps to exact the reparation which they were entitled to demand "that His Majesty's Government are compelled to consider what course it may be necessary to pursue in order to enforce their demand," and "what steps they should take for the protection of British interests." No notice more definite can be imagined.

The reply of the United States is to be found on page 147, No. 138; it is a telegraphic dispatch from Sir Michael Herbert to Lord Lansdowne of the 13th November:

I communicated to Mr. Hay this morning the substance of your lordship's telegram of the 11th instant. His excellency stated in reply that the United States Government, although they regretted that European powers should use force against Central and South American countries, could not object to their taking steps to obtain redress for injuries suffered by their subjects, provided that no acquisition of territory was contemplated.

There, again, you have a most specific acquiescence in His Majesty's Government using force "to obtain redress for injuries suffered by their subjects," and the only reservation made is as to there being no intention to make any acquisition of territory. So that, I submit, that with regard to the United States, I have been able entirely to destroy the contention put forward by Judge Penfield, that there was some limitation in the notice, and that the acquiescence was not of the general nature for which we contend, and an acquiescence to the fullest extent in the obtaining, as a result of measures of coercion, of redress for the wrongs which British subjects had sustained.

And that is emphasized by the fact, to which I called the attention of the tribunal when I was reading the memorandum of the 23d December, in which Lord Lansdowne made his formal reply to Mr. White's proposal on the 13th December of arbitration, that that memorandum of the 23d December, in which he states as one condition that there should be a decision as to the security to be provided, was sent through the United States. It was sent to Mr. White; it was sent by Mr. White to Mr. Secretary Hay; and by Mr. Secretary Hay it was transmitted, I think, to Mr. Bowen. That appears in the Venezuelan appendix, at page 155, in a dispatch from Mr. Hay to Mr. Bowen, dated the 27th December, which transmits to Mr. Bowen in cipher by telegram the British memorandum with regard to the terms of arbitration. So that we find the United States, after having acquiesced in the terms that I have pointed out, transmitting, for the purpose of endeavoring to secure

an arrangement between Great Britain and Venezuela, a dispatch in which the giving of security is pointed out as one of the essential conditions.

With regard to France, the case is no less clear. The documents with regard to France will be found in the British Blue Book at pages 158 and 164. At page 158, document also No. 158, is a memorandum communicated by M. Cambon. It has been read to the tribunal, and read to the tribunal more than once, and what I ask the tribunal to observe is that the reserves that are made by France relate to the specific securities which France had on certain parts of the Venezuelan customs, and that the reserve is made "*dans le cas où celle-ci devrait aboutir à une main-mise sur les Douanes Vénézuéliennes le Gouvernement de la République aurait des reserves à formuler,*" and at page 164 there is Document No. 165, in which Lord Lansdowne informs M. Cambon that—

His Majesty's Government are fully aware of the nature of the French claims upon a portion of the revenue derived from the maritime customs of Venezuela. In any measures to which His Majesty's Government may resort for the purpose of enforcing their claims against the Venezuelan Government, care will be taken that French interests are not prejudiced.

And so with regard to Belgium—the documents there are No. 189, on page 172, and No. 205, on page 181. The first is an intimation from M. Grenier to the Marquis of Lansdowne, in which he was reminded that the Belgian interests, like those of France, were guaranteed by the Venezuelan customs, and he stated that the prior right of Belgium on a part of the revenues of the customs would have to be respected. Lord Lansdowne in the second communication wrote back, stating that these rights would be respected—and we do respect them. I really have to apologize to the tribunal for referring to these documents again—they were read a week ago and they speak for themselves—but after the observations which Judge Penfield made, it becomes absolutely necessary to recur to a point which I should have thought was sufficiently established already, and all that is necessary by way of answer to what Judge Penfield said is to refer to the documents, because, as I submit, it is impossible to read those without seeing that there was there a complete acquiescence in the action by the blockading powers of a forcible nature in order to obtain payment for the claims of their subjects. The notice was a notice that such action was to be taken; there was an acquiescence in such action being taken with certain reserves which His Majesty's Government respect and always have respected, and there is no analogy whatever with the case of proposed action to assert a claim to territory with regard to which third powers have some right.

That is the third ground on which I submit that the right to pref-

erential treatment is established—that our action was action taken with the acquiescence of the other powers

My fourth ground for preferential treatment is that the claim put forward by the nonblockading powers is a claim by those who did not share in doing the work to share in the result. We have no objection to their benefiting by what was done by the blockading powers, but we say that the blockading powers, at whose risk and expense this security was provided, must come first. We have heard a great deal about the maxim “equality is equity.” That is a maxim that is very often cited, but I do not think that ever in the whole history of debates in courts of law has it been cited as often as it has been in the course of the last ten days. The horse has been ridden almost to death, and I think he might now be turned out to grass. Equality is equity if the circumstances are the same; if the circumstances are different, equality is the very reverse of equity. And the conduct of the nonblockading powers as represented here is, in truth, a little remarkable. They express a holy horror of war, but at the same time they express an extreme eagerness to share in the results of war. They know that those results would not have been achieved but for the measures of coercion. Their conscience revolts against the measures of coercion, but their conscience is silent when the question is whether they should share in those results. The intention is entirely directed to the beneficial results achieved; the intention is entirely withdrawn from the process by which those results were achieved; and I must compliment the nonblockading powers on the extreme ingenuity with which, while professing, and I have no doubt feeling, the most intense aversion to coercion of any kind, they are at the same time able, with the utmost alacrity, to come forward to share in the results which coercion may have achieved. We have all heard of what is known as the *Societas Leonina*, in which the lion took by far the greater part of the profits. This is a new version of the *Societas Leonina*. The nonblockading powers are to share equally in the results, while contributing nothing whatever to the process.

And the conclusion which would be reached, if effect were given to these contentions, would be sufficiently remarkable. We have Mexico coming forward with a debt which I should have thought, if ever a debt was desperate, might be considered in that category. It is a debt which amounted originally to something like £20,000 at the outside, and it has now attained the respectable figure of £102,000. How? By the accumulation of interest at 6 per cent for a period of seventy-six years. It is a debt of that kind that is brought forward where everyone would have said that, humanely speaking, the debt was not worth any paper on which the obligation might be inscribed—where you have seventy-six years' interest, three-quarters of a cen-

ture's interest, accumulating on that debt—and yet Mexico is to go on her way rejoicing, and unexpectedly to reap the benefit of the action of the blockading powers by getting payment of a debt composed to the extent of £20,000 of principal and £82,000 of interest.

The position of Belgium, which is so ably represented here, is, I submit, not very much better, for the Belgium claims consist chiefly of that with regard to the Society for the Supply of Water to Caracas, with regard to which they have a specific security—a security which was reserved and which Great Britain undertook to respect in those communications between M. Grenier and Lord Lansdowne. They themselves call it a guarantee. They pointed out that the Belgium interests are secured by a charge upon the customs of Venezuela, and we undertook to respect them.

Now, France has some claims which are also secured in the same way; and M. Clunet, on behalf of France, has stated to the court with the utmost frankness that he could not in fairness ask that debts which were so secured should be charged as against the 30 per cent. I submit that in taking that course France was doing nothing more than that to which she was constrained by a sense of what is right and what is just; that she was taking the course which the tribunal would have directed to be taken if France had not been impelled by her own sense of what is right to put her case in the way it has been represented by M. Clunet. But how is Belgium, on any ground of equity, to come in with this enormous claim, a claim with respect to which she has her own specific security, which security was reserved, and which Great Britain undertook to respect?

As regards the British claims a question was put to us as to what our securities were. With regard to the British claims, there are no securities whatever, excluding the possible exception which is stated on page 8 of the case originally presented on behalf of Great Britain, where will be found this passage:

The Venezuelan Government have expressly recognized the justice of the British claims, subject to examination by a mixed commission, and it is not, therefore, necessary to deal with them in detail. It is sufficient to state that they are not secured in any way except under the arrangement now in question. The "diplomatic debt," to which reference will presently be made, did originally include some British claims, but these have since been paid off except as regards a claim for interest which is at present under consideration by the mixed commission at Caracas. Save in so far as this claim for interest may be held to be part of the diplomatic debt, the present British claims are not entitled to the security available for the discharge of that debt.

That is my answer to the question which was put to us with regard to the British claims.

Now, a point was raised of great importance by M. Clunet as to the allowance of interest on any claims which are not paid at once. I am informed by my friend, Mr. Cohen, who took a prominent part in the



first great arbitration of recent times, the Alabama arbitration, that the question as to interest in that case was elaborately argued, and that the court held that interest should be allowed, that it amounted to a very large sum, and was comprised in the award. In that matter I leave myself entirely in the hands of the tribunal. If the tribunal think it right that those creditors whose claims are postponed should have interest upon the amount in the meantime, I can not, on behalf of Great Britain, see that there is any ground for objection.

. Now, on these four grounds I submit that, as a matter of principle, Great Britain's claim has been established to preferential treatment. Let me merely mention them, in as many sentences. The first is that adequate security was insisted upon throughout, and agreed to, and that adequate security would not be given if the nonblockading powers are admitted to share *pari passu* in this fund. The second is that the security was obtained purely by the action of the blockading powers. The third is that the other powers acquiesce in the blockading powers taking hostile action to insure payment of the claims of the blockading powers. And the fourth is that the nonblockading powers wish to share in the results, while they have borne no part in the process by which those results were achieved.

Now, let me say a word about the precedents which have been appealed to. I do not feel any surprise that Judge Penfield was extremely concise on the subject of China. The Chinese myth has been exploded for a good many days now. There is no analogy between a case where outrages have been offered to the representatives of all the European powers, where the claim sent in to China was swollen by including the demands of all the European powers, and where no dispute was ever raised as to any right to preferential treatment out of a particular fund set aside. There is no analogy between such a case as that and the case which is now before the tribunal. Under those circumstances I do not wonder that Judge Penfield speedily retreated from China and endeavored to ensconce himself in Haiti. I will endeavor to follow the learned judge to Haiti, and I hope to satisfy him that the case of Haiti is just as inapplicable as is that of China. It is referred to in the supplementary statement of the United States, in the Yellow Book, at pages 41-47. There it will be found that the dispute with Haiti was one which related to certain dues for light-houses; that the Government of Haiti, in the exercise of its discretion, had thought right to impose differential dues, dues which unduly favored certain nations, with regard to the benefit derived from certain light-houses upon the coast of Haiti. The United States protested, and very naturally protested, against such differential treatment. Haiti had thought right to promulgate a table of dues, according to which vessels belonging to Haiti paid a great deal less than the vessels of other



nations. I should not really have referred to this matter had not the case of the Haitian light-houses been disinterred by Judge Penfield, and the repose that we all thought Haiti was to enjoy forever disturbed by her being evoked before this tribunal in the course of his speech the day before yesterday. Protest was sent to the Haitian Government very naturally, and the same thing took place with regard to Guatemala, to which Judge Penfield also referred. What possible analogy is there between a case of differential dues with regard to light-houses, and the present case? A word was dropped by Judge Penfield as to the way in which the finances of Turkey and Egypt had been dealt with in favor of the creditors of all the powers. Again, I ask what possible application have those international arrangements which have been made in Turkey and Egypt to the present case? I feel bound to record my obligation to Judge Penfield for having recurred to this matter, because the only effect of his doing so is to fortify the observation I ventured to make a week ago to the tribunal, that absolutely no precedent could be found, by ransacking the archives of international law and history, for the claim that is put forward on behalf of the nonblockading powers—a claim which, I submit, is opposed to every ground of principle.

I have now concluded my review, in reply, of the circumstances of this case. I submit that the conduct of Great Britain throughout the whole of this transaction has been amply justified. We are told that we showed some want of respect to the principles of 1899. It is said, in the first article in that convention, that—

The signatory powers agree to employ all their efforts to secure a pacific settlement of international differences in order to prevent, as far as possible, recourse to force.

Did not Great Britain exert every possible effort to prevent the necessity for a recourse to force with Venezuela? Was it not only when Venezuela refused even consideration to her claims that she was driven to take hostile action? In the second article of that convention it is provided that—

In case of grave difference or of conflict, before having recourse to arms, the signatory powers agree to have recourse, so far as circumstances permit it, to the good offices, or to the mediation of one or more friendly powers.

To what purpose would it have been to have applied to the mediation of friendly powers under the circumstances in which Great Britain found herself with Venezuela? Would not the Government of Venezuela "accustomed," as it is said, "to such communications," have simply laughed at Great Britain if she had proposed to call in another power for the purpose of mediating? By the ninth article of that convention of The Hague, it is provided that "In all disputes of an international kind which do not involve either the honor or essential interests, and which depend on a difference of opinion on

questions of fact, the powers may have recourse to a 'Commission Internationale d'Enquête.' " To what purpose would it have been to propose such a "Commission Internationale d'Enquête" to Venezuela? Venezuela refused to consider the matter of complaint.

You have been told that if you decide in favor of the blockading powers you will encourage war; that other powers will be led to rush into war in order to secure a preference. Such considerations seem to me to be very farfetched indeed. It might, with much more justice, be said to this tribunal that if, on a reference of this kind, those who had not taken part in the warlike operations were admitted to share in all the advantages to be gained by those at whose expense and risk they were conducted, the pacific settlement of disputes for the future would be discouraged, and wars would be prosecuted to the bitter end. But it would be paying a very poor compliment to this tribunal to dwell on such considerations. I am certain that this tribunal will, in this matter, be guided by their sense of what is right. It is because the blockading powers confided in the justice of their case that they have come here to evoke the opinion of this tribunal; and may I express the hope that when the whole circumstances have been reviewed the allied powers will find that their confidence has not been misplaced.

## REPLY OF WILLIAM L. PENFIELD ON BEHALF OF THE UNITED STATES

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MEETING OF NOVEMBER 13.

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MR. PRESIDENT AND GENTLEMEN OF THE TRIBUNAL: I have no desire to detract from the credit which is justly due to Great Britain for what she has done to promote the settlement of disputes by referring them to the judicial courts or to arbitral tribunals. I can, therefore, unite in the encomiums which Sir Robert has paid to his Government for all it has done to advance the cause of arbitration. Numerous and great as were the achievements of the nineteenth century, the capital event which fitly crowned its work was the work of The Hague conference, and the author of that conference will be forever honored as one of the foremost benefactors of humanity. If I should, therefore, follow up a little course of thought suggested by Sir Robert it would be without any desire to speak in any disparaging sense of His Majesty's Government; and far is it from any wish of mine to refer in any terms other than those of the utmost respect to any Government appearing before this tribunal.

In the course of his argument, Sir Robert suggested that in the controversy which ensued over the presentation of the grievances of his Government to that of Venezuela the point of honor had become involved, and that his Government was compelled to resort to war for its vindication. As representing a neutral Government I shall refrain from the expression of any opinion on that concrete question, but as friends of international arbitration we can not fail to notice that the blockade was actually declared on December 20, 1902, and that Venezuela on December 13, 1902, two days after the blockade was ordered and seven days before the blockade was actually declared, did propose to submit the controversy to arbitration. That is to be seen in the British Blue Book at page 181, No. 206; page 170, No. 183; and page 171, No. 185.

To a disinterested friend of the cause of international arbitration the question would naturally arise, whether the point of honor had really become so involved that war was inevitable. This raises the further academic question, What is that point of honor that, in this age of humanity, justifies the shedding of blood? Men now generally settle either through the mediation of third parties or by resort to

the courts the major part of the differences which were formerly settled by appeal to the code duello, and I believe that in many instances when nations have gone to war on "the point of honor" the real impelling motive will be found to have been either some feeling of national envy, or the desire to acquire territory, or a feeling of resentment over some grievance which has excited a desire to inflict punishment. "Spare the rod and spoil the child" is an adage which expresses a notion of international as well as of juvenile discipline, but so far as the reign of reason is superseding the rule of might in the settlement of disputes, just so far are appeals to the code duello and to war "on points of honor" becoming less frequent. I do not say that an appeal to force, in order to compel the recognition of international obligations, may not be justifiable under any circumstances, nor will I presume to pass judgment on the action or motives of a Government which conceives it to be its duty to resort to force. That is a question to be decided by the parties directly concerned and is, in a wider sense, a question on which the enlightened public opinion of the civilized world will finally pronounce the historical verdict. All Governments who appear here are friends of international arbitration, otherwise they would not be here, and I think that we will all agree that, in the interests of international arbitration, it is very desirable that the occasions and causes of war shall be limited, as far as possible, by the reference of differences between nations to this tribunal.

In the course of his argument the German delegate, Mr. Buenz, said, in substance, that during the controversy of the allies with Venezuela a new element came in, and there was the suggestion of a "scheme," the suggestion or inference that the peace powers had gratuitously intermeddled in a business in which they had no concern. It is, however, not disputed that the peace powers are creditor nations, and it would be a hard rule that would prohibit creditor states from settling by diplomacy their claims against their debtor state simply because other creditor states happened to be at war with that debtor. It would be too much to ask of Governments that they should decline to accept a settlement with a debtor state because it is at war with other states having claims against it. The peace powers are not to be blamed for looking to the interests of their citizens or for availing themselves of an opportune moment to effect a full settlement of those claims. It is of the essence of diplomacy that it should avail itself of opportunity, and it is this which gives to it its supreme value. The argument of Mr. Buenz therefore tends to discredit a legitimate use of diplomacy and to exaggerate unduly the rights of belligerent states.

In opening the case for the United States I endeavored to show that under the protocols of February 13 the question of preferential

treatment was not submitted to the tribunal; that in making the protocols the allies abandoned the claim of preferential treatment of their second-rate claims. I showed that neither the word "preferential" nor any equivalent word is to be found in those protocols, and that according to the standard definition of the words "separate" and "preferential," they have a distinct and inconsistent meaning, one with the other. I then read the documents to show that the allies, and especially the British Government, were eager to effect a settlement and make peace with Venezuela, and that they abated their pretensions of priority or preferential payment and took their stand in the protocols on the question of separate or identic treatment.

Sir Robert occupied one hour of his argument in an attempt to prove that the standard English dictionaries are all wrong; that the words "separate" and "preferential" do in fact mean the same thing; and after having proved to his own satisfaction that Johnson's and Webster's and Worcester's and the Standard and the Century dictionaries are all wrong in not defining the two words to mean the same thing, he expressed regret that he had spent so much time on so pointless a contention.

Now, when a distinguished lawyer like the attorney-general of Great Britain is compelled, in order to save his case, to try to prove that the word "separate" means "preferential," that the word "war" means "peace," and that black is white, hopeless must be that case on his own confession.

The argument of the attorney-general recalls the competition of the two Greek rhetoricians who had a debate, in which they spoke on the theme of wrestling. The first speaker said that his competitor was the most skillful of all wrestlers, for that he could throw down all who came against him; but the second speaker said that his opponent was a still more skillful wrestler, for that he could not only throw down all who came against him, but that even when he was thrown down himself he could get up and could convince the judges by argument that he was never down at all.

Mr. Buenz expressed the view that the wording of the protocols is not important; and Sir Robert said that the peace powers had shown a disposition unduly to narrow the scope of the arbitration, and his argument was that the tribunal should consider the protocols and the previous negotiations and bring forward and incorporate into the protocols certain terms and conditions which had been previously imposed and accepted, but which were, some of them, wholly omitted, and others modified, when the final agreement was formulated in the making of the protocols. That contention can not be conceded for a moment, because it can not be admitted without violating a cardinal rule for the construction and interpretation of treaties,

namely, that we are not to interpret what has no need of interpretation. The language of the protocols is absolutely clear and unmistakable. They contain only one phrase that admits of judicial construction or interpretation, namely, the phrase "reasonable time."

Let us now consider the question briefly in the light of principle. Let us suppose that a treaty of peace is solemnized between two or more great states after a long and sanguinary war—the treaty of Westphalia or the treaty of Utrecht, for example. Let us suppose that a controversy arises over the due execution of the treaty by the high contracting parties. Let us suppose that the provisions of the treaty are perfectly clear, perfectly intelligible, and that they have only one possible meaning—that all the lexicographers who define the words used in the treaty agree in their definition of every word of the treaty. Now, then, we can not introduce into that treaty, for the purpose of changing its meaning and defeating its execution, conditions and terms not contained in the treaty without opening the way to destroy every treaty that has ever been celebrated.

My friend Mr. Buenz intimated that the peace powers, by invoking the most elementary precepts for the interpretation of the protocols, are indulging in sophistry, and the learned attorney-general indulged in the same general observation. I quote Mr. Richards, who said in substance that the protocols of May 7, under which the tribunal is created and acting, limit its power and authority; and I reiterate what was said by Sir Edward Fry, one of the distinguished arbitrators in the Pious Fund case, that the protocols are the organic law of the tribunal and the measure of its jurisdiction. They are no less the measure of its jurisdiction to interpret than to decide.

Sir Robert characterized as bold, and even bolder, my contention that the allies, in making the protocols of February 13, abandoned the claim of preferential treatment. While I do not think that qualifying an argument in this manner either adds to or detracts from its force, I might, following the illustrious example, characterize the denial of our contention as still bolder and the boldest of all the contentions advanced before the tribunal. Sir Robert's contention is that the word "separate," used in article 5 of the protocols of February 13, means "preferential," and he called attention to certain documents as sustaining that contention. I have already shown that this contention can not be upheld without disregarding the fundamental canons of construction. But, meeting our opponents on their own ground, I will show that the documents taken in their order abundantly prove our contention, and in reading these documents in the Blue Book we must remember that they consist largely of dispatches passing only between Lord Lansdowne and Sir Michael Herbert, and are not evidence as against Mr. Bowen's state-



ment that the claim of preferential treatment was a new claim. The exactitude of Mr. Bowen's statement was never even questioned by any of the plenipotentiaries who negotiated the protocols, and it is not the usage of diplomacy to allow so important a statement of fact to go unchallenged if the statement is inexact.

We concede that the allies had made various demands for adequate security, guaranty of adequate security, or that the tribunal should itself decide in what manner the claims should be secured. But all of those conditions were omitted when the protocols of February 13 were framed, and they were omitted for the very good reason that the allies accepted the security offered. When the assignment was made to all the creditor nations, if any of them objected to the form of it they were, on principles of common fairness and equity, put to their election, either to accept the security as it was tendered or to reject it. The allies accepted it, and therefore the protocols are silent on that question of adequate security. They accepted it, and they were glad to accept it and to escape from an unpleasant situation by accepting it and abandoning the pretension to preferential treatment.

In this connection I beg to read to the tribunal portions of certain dispatches in the British Blue Book, and I will make it as brief as possible. I do it in order to exhibit to the tribunal the true connection between these documents, and in order that we may get their true significance. I begin with page 216, No. 236—the fifth paragraph on page 216. This, dated January 15, 1903, is from the Marquis of Lansdowne to Sir F. Lascelles:

I said that it seemed to me that the blockading powers stood on an entirely different footing from the rest, and that, in my view, it would be impossible for us to allow our representatives to take part in a general discussion at which a number of the other powers would also be represented.

Now, that states their position at that time. I next call attention to No. 241, on page 218—to the paragraph numbered 4, on page 218:

Is it proposed that the 30 per cent should be paid by monthly installments to the blockading powers only, or are the whole of the creditor powers also to share the benefit? We shall be quite ready to accept the security proposed by Mr. Bowen if he can supply statements showing that he offers guarantees adequate in amount, and we shall be prepared to urge the German and Italian governments to accept it.

Now, that was January 24, 1903, from the Marquis of Lansdowne to Sir Michael Herbert. I next call attention to page 220, No. 246, from Sir Michael Herbert to the Marquis of Lansdowne, dated January 27—the second paragraph:

It is impossible for Mr. Bowen, who stands committed to the other powers, to give to the blockading powers priority over them in respect of payment. He asserts that all the creditor nations would have been placed on an equal footing if the question of claims had been referred to the Hague Arbitration Tribunal.

The next document is from the Marquis of Lansdowne to Sir Michael Herbert, at page 221, No. 251, dated January 28:

With reference to your telegrams of the 27th instant, His Majesty's Government can not admit that pledges given by Mr. Bowen to the powers which are not engaged in the blockade are binding on this country, and His Majesty's Government can not accept a settlement which would force them to place their claims on the same footing with those of the nonblockading powers.

That shows the controversy. Here, then, on January 28, in the second paragraph of that instruction, Lord Lansdowne proposed a solution, viz, "It should not be difficult to make a separate arrangement with the blockading powers." That is the solution proposed by Lord Lansdowne on January 28.

I next call attention to No. 252, from Sir Michael Herbert to the Marquis of Lansdowne, dated January 29, which shows the next step of the British Government. I read the first two paragraphs:

The Italian ambassador, the German chargé d'affaires, and I called to-night on Mr. Bowen. I informed him that we were forced to reckon with public opinion in England and that it might be necessary to fall back on the tribunal of The Hague. We were unable to obtain a satisfactory answer from Mr. Bowen, who was very obdurate.

During the course of his argument Sir Robert made an observation, based on what he called the silence of the peace powers during the progress of the trial, with respect to the attitude of Venezuela, and he made that observation in order that a certain inference might be drawn as to what the opinion of the peace powers might be with reference to Venezuela. This, I think, will permit of the making by myself, also, of an observation on a certain impressive silence during the progress of this trial. We have all observed that during the progress of the trial the allies have never referred to each other as allies, but only as blockading powers, and we take all this studious care in the choice of endearing terms as an attractive side light elucidating the meaning of this dispatch of January 29. It is evident that the allies were glad to have this matter adjusted, and we were glad to hasten to sign the protocols upon the terms upon which Mr. Bowen made his stand. It appears that Great Britain, taking the lead in this naval blockade, agreed to accept the payment in cash of £5,500 and to refer all her other claims to arbitration or to the mixed claims commission; but Germany came forward and demanded and obtained that there should be paid to her not only £5,500, but a further sum, amounting in all to 1,754,000 bolivars, in cash. Is it surprising, when we read this dispatch No. 252 and take the situation as it is actually disclosed by the dispatches and instructions in the Blue Book, that our friends, our honorable opponents, have considerably refrained from following the example of William Pitt, who invariably referred to Russia as "our

ally," and that from first to last the allies have referred to each other not as "our ally" but as the blockading powers?

I now call attention to Instruction No. 256, on page 223, dated February 1—two days after this dispatch—from the Marquis of Lansdowne to Sir M. Herbert:

It is not the wish of His Majesty's Government to place any obstruction in the way of a reasonable arrangement between the Government of Venezuela and other powers. At the same time they consider it essential that priority should be given—

To what?

to the first rank of claims of the blockading powers, and that provision should be made for the extinction, within a reasonable time, of the second rank of claims.

"Priority should be given to the first rank of claims"—that is the language of the dispatch, and Mr. Bowen conceded that priority to the first rank of claims by paying them all in cash, £5,500 each to Great Britain and Italy, 1,754,000 bolivars to Germany.

Subject to the fulfillment of these conditions, the terms which Venezuela may find herself able to offer to the other powers are of no concern to His Majesty's Government, even if as advantageous as those obtained by the latter; but except as the result of arbitration they can not assent to the doctrine that, in cases like the present, identic treatment should be accorded to belligerents and nonbelligerents.

So that on February 1 Lord Lansdowne took his final position on the question of separate or identic treatment. That was the only alternative—nothing there about priority of treatment. The question before the court now is, Shall it be identic or separate—not preferential payment, not priority, but separate or identic—is the question as to the second-rank claims; and priority as to the first-rank claims was settled by Mr. Bowen.

The next instruction I read is on page 224, No. 257, from the Marquis of Lansdowne to Sir M. Herbert, dated February 2, the next day after Lord Lansdowne's position was taken on separate or identic treatment; and see how rapidly Lord Lansdowne now is pushing to a solution this unpleasant controversy out of which he wished to extricate his Government:

His Majesty's Government are hoping shortly to learn from your excellency whether a settlement on the lines indicated in my telegram of yesterday is possible—

Identic or separate treatment?

If not, they are prepared to entertain proposals in conformity with the policy laid down in my telegram of the 30th January. Procedure might be as follows: A protocol would be drawn up for signature at Washington embodying the conditions which Mr. Bowen has already accepted, including those for the settlement of the first-rank claims. We should then reserve for adjudication by the

President of the United States, or, failing that, by the tribunal at The Hague, questions which arise—

Out of what?

out of the proposal for identic treatment of all the creditor powers.

I next read instruction No. 259, dated February 3—the next day—from Lord Lansdowne to Sir Michael Herbert:

In the event of its proving impossible to arrive at a settlement of the nature described in my telegram of the 1st instant, the procedure which we contemplate is that you and your colleagues should ascertain whether the President of the United States would consent to arbitrate.

Now, observe the next one, No. 260, from Sir Michael Herbert to the Marquis of Lansdowne, dated February 3, the very same day:

[Telegram.]

With reference to my telegram of yesterday, I have to state that late last night Mr. Bowen sent me a letter in which he stated that he could not accept our proposals, and suggested a reference to the tribunal at The Hague of the question of priority.

There you have it. The President at all times pointed to The Hague Tribunal as the fit arbiter of the controversy in all its phases, and at the same time Mr. Bowen, the representative of Venezuela, refused to consent that the President of the United States might arbitrate this question. Mr. Bowen was acting in what he conceived to be a conscientious discharge of his duty toward Venezuela, but no matter what his motives were—we assume that the motives of all men are just and correct—Mr. Bowen declined to assent, and was not Sir Michael Herbert somewhat justified in his statement that Mr. Bowen was “obdurate?”

I read now, at page 225, an instruction from the Marquis of Lansdowne to Sir Michael Herbert, No. 263, dated February 4:

A settlement on the lines of my telegram of the 1st instant being now presumably unattainable, you should proceed with regard to the points reserved for arbitration in accordance with my telegram of the 3d.

I read next, and last, the Marquis of Lansdowne to Sir Michael Herbert, No. 265, dated February 5, in which Lord Lansdowne sends by cable to Sir Michael Herbert the text of a draft protocol, and I call attention to the last paragraph of article 5 on page 226, in which Lord Lansdowne has fixed the form of the protocol and offers it for submission to Mr. Bowen as a draft protocol. It reads as follows:

Any question as to the distribution of the customs revenues so to be assigned, and as to the right of Great Britain, Germany, and Italy to a separate settlement of their claim, shall be determined—

And so forth. And these words, which embody the precise and final definition by Lord Lansdowne of the question to be submitted for arbitral decision—these words, expressing his formula of the question of separate or identic treatment—are incorporated verbatim et literatim in the protocol of February 13. There is not in those protocols a sentence or a word suggesting the claim of prior or preferential treatment of the claims of the allies.

I have now traced the steps in the negotiations showing the varying attitude taken by the British Government, showing its reason or motive for hastening to a speedy solution by forming a treaty of peace and settling the controversy, and I have shown, finally, that the only question proposed for determination was the question of separate or identic treatment. If that had remained as the sole question of dispute, speaking my personal opinion, I doubt whether the United States Government or any of the peace powers would have cared to come to the tribunal with that simple question. I do not think that any of the peace powers would object to separate treatment in the sense that an award should be made giving to the allies their ratable share and to the creditor States their ratable share, separately, all claims being paid *pari passu*. But inasmuch as the question of preferential treatment was again brought forward in the protocols of May 7, it then became important to the peace powers to assert and maintain their position, their equal rights.

It is not the usage—I am speaking now of Mr. Bowen's full powers—it is not the usage of plenipotentiaries who are empowered by their sovereign to settle a controversy, to terminate a war, and to solemnize a treaty of peace, to engage in such delicate and important negotiations without the production and inspection of their full powers. Mr. Bowen was an extraordinary plenipotentiary, and the only authentic evidence of his authority to represent Venezuela was his full powers. I doubt if you could find an instance in diplomacy where plenipotentiaries were so careless in the discharge of their duty as to enter upon serious negotiations to make a treaty of peace or any other important convention without the actual production and inspection of the full powers in order that their validity and sufficiency might be passed on. There is the best reason for this precaution and there was a particular reason for it in this case, for it is not too much to say that the allies did not have unbounded confidence in President Castro at that moment. They were enemies, and that trained diplomatist, Sir Michael Herbert, understood his business perfectly well, and he transmitted by cable to his Government the full text of the full powers exhibited by Mr. Bowen in order that his Government might pass on the validity and sufficiency of the full powers to authorize him to bind Venezuela by a complete treaty of amity and peace, which the allies expected to make. Those powers

appear in the British Blue Book textually, and there is not the slightest evidence that any other powers were ever produced by Mr. Bowen and inspected by Sir Michael and his Government.

In the course of his argument Sir Robert again referred to the announcement of Mr. MacVeagh before the tribunal that the United States adopted the preliminary examination on behalf of Venezuela. I do not happen to know the reason which led to that announcement by Mr. MacVeagh. I do not suppose that Mr. MacVeagh attached to that act the significance which has been attributed to it by our honorable opponents. I then supposed, and I still believe, that it was well understood that Mr. MacVeagh was anxious to speak and take his departure; that he spoke only for Venezuela; and that the adoption of the Venezuelan case by the United States was simply to enable the latter to cite the documents attached to that case, thereby obviating the necessity of reprinting them as a part of the case for the United States. But if there has been any contention put forward in this case which can properly be characterized as pointless it is this particular suggestion; for the cases of the United States and Venezuela have been treated from first to last as independent and separate cases, each resting on its own bottom.

In the course of his argument Sir Robert undertook, again, to maintain that the United States Government acquiesced in the action taken by the allies. But to what extent did it acquiesce? How can it be said that a government acquiesces, in advance, in some extraordinary claim or pretension which was never before put forth? A declaration of war is in itself notice—but notice of what? Is it notice that either of the belligerents will advance a claim which, as our opponents admit, is absolutely unprecedented? No; the precedents are all against them—in China, in Egypt, in Guatemala, in Turkey. Why, then, should the United States warn the allies against making a claim which is now made for the first time in the history of modern nations? It will not do to argue that the notices given by the allies were not directed to any particular end. Why, then, did they give specific notice of the intention to establish a pacific blockade? Was not a policy of the United States announced to all the world by President Roosevelt in his message of December 3, 1902, in which he declared that “we do not guarantee any state against punishment if it misconducts itself?” Is it not known to all the world that the British Government, through its ministry in the Parliament, declared its adherence to that policy and claimed to be the author of it? In what extremities must an advocate find his case when he is driven to argue that the notices given by the allies were general—that they did not mention specific points which were only mentioned in the answers of the peace powers? If the notices given did not refer, in a diplomatic way, to certain points, why were not notices given to the Netherlands



as well as to Belgium—to Spain, and Sweden and Norway, as well as to the United States? Thus the argument advanced by our opponents ends, like Saturn, by devouring its own children.

I deem it a great honor to be engaged in a case with the distinguished gentlemen who appear here, either as our associates or as our opponents. Our labors have been heavy, but they have been cheered and lightened by the play of a lively and inoffensive wit, which I have equally enjoyed and admired, even when we have been the object of it. In the course of Sir Robert's argument a recondite allusion was made to a certain society which he styled "the Societas Leonina," a society of which Sir Robert is doubtless a member, and in which, as I understood him to say, the lion took the greatest share of the profits. Not being myself familiar with that society, I suppose Sir Robert was alluding to the British lion. If so, I felicitate him on the aptitude of his metaphor.

Mr. Buenz called attention to certain alleged errors of statement on my part of the amount of the German claims. I took the statement of the amounts from the documents of the German Government which are contained in the British Blue Book. I gave the citation in my former argument, and the tribunal can judge. But even on Mr. Buenz's own statement, as I understood it, the allowances by the German-Venezuelan mixed claims commission amount only to 31 per cent of the claims—a reduction of 69 per cent. This shows the importance of a judicial revision of claims. It illustrates the value of the preferences the allies have already obtained, and it reenforces our contention that the allies have failed to establish, even on their own ground, the inadequacy of the security, even if that question had not been excluded from the consideration of the court by the language of the protocols.

We have shown by the precedents that the principle of equity, of nondiscrimination in matters of justice, is consonant with the usage of nations. Certain of those diplomatic precedents are exhibited in the appendix to the case for the United States—I simply refer to them as precedents set by the British Government in which the position was taken that there should be no discrimination in matters of justice. In the course of his argument, however, Sir Robert referred to this appendix, somewhat facetiously alluding to the Haitian precedent; but either because he did not observe them, or because the precedents were set by his own Government, he passed them all by except the precedent set in Haiti on the initiative of the British minister, Sir Edward Thornton. He seemed to view that precedent as a kind of *pons asinorum*, or *ponte dei sosperi*, over which the agent of the United States was to pass—I could not quite tell his meaning. But I never imagined that the decision of this case would turn on a question of discrimination in the collection of light-house dues in

Haiti; neither did I imagine that our honorable opponents, although worthy members of the *Societas Leonina*, would ever seriously claim all the custom-houses in Venezuela. I am quite agreed, with the concurrence of our honorable opponents, that we shall dismiss the Haitian precedent, together with the custom-house contention, and the contention that the word "separate" means "preferential." I am quite willing to agree to dismiss them all to the common limbo known as "the paradise of follies."

Our conclusions then are:

First. That when the language is clear and unmistakable, treaties are to be scrupulously observed and carried out precisely as they are written. This principle is vital to the maintenance of good faith among nations.

Second. Consequently the only questions left open by article 5 of the several protocols of February 13 are as to the distribution of the customs revenue assigned, and as to the right of the allies or the peace powers to separate treatment of their claims. The United States Government does not object, on its part, to such separate settlement and distribution, provided that all claims properly chargeable against the fund assigned shall be paid ratably and *pari passu*.

Third. That the question of the adequacy of the revenues assigned to pay all the claims within any definite period is not submitted by the protocols of February 13 to the determination of the tribunal; that the only question submitted in this respect is the question of reasonable time, and the solution of that question embraces the consideration of the usage and practice of nations, of the precedents set, of the just yet reasonable expectations of the claimants, in all the circumstances under which the claims originated, and of the fiscal condition and ability of Venezuela to pay. In this connection I refer to the British Blue Book, page 219, No. 241.

Fourth. That the substantive rights of the high contracting parties were fixed by the protocols of February 13, and that those rights were not altered by the protocols of May 7.

Fifth. That article 1 of the several protocols of May 7 submits to the tribunal three questions, namely, (1) how the customs revenues assigned shall be divided between the blockading powers and the other creditor powers; (2) the question of preferential or separate treatment to the blockading powers; (3) if neither separate nor preferential treatment is awarded to the blockading powers, the question of equality of treatment to be determined with reference to any preference or pledges of revenues assigned to and held by any of the creditor states.

Sixth. That inasmuch as the protocols of February 13 constituted a treaty of peace; and inasmuch as the blockading powers thereafter acquired no new right to preferential treatment, the claim of which

had been abandoned in the making of the protocols of February 13, this question of preferential treatment is decided by the language of those protocols, which excludes the claim for preferential treatment.

Seventh. That the assignment on January 27, 1903, by Venezuela of 30 per cent of the revenues of the ports of La Guaira and Puerto Cabello was expressly made to all the creditor nations, and that the blockading powers, having accepted the assignment, in common with the other creditor states, preferential or prior treatment of the claims of the blockading powers can not be awarded without disregarding the terms of the assignment, as well as the terms of the protocols of February 13, fixing the rights of the parties and stating, for submission to the tribunal, the question of separate and not of prior or preferential payment.

Eighth. That when the assignment was tendered by Venezuela the allies were, on principles of equity, put to their election either to accept or reject it as tendered; that this right to elect between the two alternatives belonged to them as a condition to making the treaty of peace; that they could elect to reject it either on the ground of the inadequacy of the security or of the form of it; that they did accept it as to the matter of substance, but they did not agree to it as to the matter of form; and, as to that matter of form, they saved the point of honor in a most admirable and laudable manner—they saved the point of honor by referring to the decision of The Hague Tribunal the question whether the creditor nations should have separate or indentic treatment.

The serious labors of counsel in this case are now nearly ended and, severely as its patient endurance has been tried by this ten days' debate, the heavier labors of the tribunal now begin in deliberation on the weighty problems it has to solve. I will not say, as has been intimated, that unless the tribunal decides in a certain way the United States Government will not again appear before the tribunal; I say the contrary—that whatever the decision may be the United States will abide by the good cause which was espoused by His Imperial Majesty the Emperor of Russia when he called The Hague conference. I will not say, as has been suggested, that the award would be unjust if it does not support our particular contention; but I do say that my Government has unbounded confidence in the justice of The Hague Tribunal, and whatever the decision may be the United States will bow to it, will respect it, and abide by it. Eleven States are parties to this arbitration, but in a higher sense the whole civilized world is a party, and that award will be best and soundest which shall commend itself to the enlightened conscience and judgment of the civilized world.

The ATTORNEY-GENERAL (Sir Robert Finlay). Before the tribunal separates, may I be allowed, on my own behalf and on behalf of

all the advocates who have engaged in this case in whatever interests, to express the very strongest sense that we all entertain of the patience and the dignified courtesy of the tribunal before which we have had the honor to appear? That patience and that courtesy have not only lightened our labors, but have rendered them a pleasure.

The president spoke in French.

The proceedings then closed.



# DIGEST INDEX.

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## ACQUIESCENCE:

Page.

- Can not be claimed because the United States acted as the medium of communication between Venezuela and the allies..... 1294
- Of peace powers in the acts of the allies, not admitted except with qualifications ..... 1293
- Of the United States, can not be construed as sustaining the claim for preferential treatment, inasmuch as no notice was ever given that such a claim would be made..... 1293, 1347
- Of Venezuela, in the conditions laid down by Great Britain and Germany ..... 1230
- Of a neutral government in a matter not already governed by international law, can not be construed as occasioning any loss or waiver of right, unless the Government proposing to take the adverse action so informs the neutral government..... 1294
- Peace powers were informed that the blockade was to be instituted and they entered no protests..... 1210, 1215-1219, 1240, 1265, 1329-1333

## AGENTS (*See also* Report of the Agent of the United States):

- List of, representing the powers before the Tribunal..... 43
- Members of the Permanent Court acting as, before the Tribunal—
  - Propriety of, discussed ..... 18
  - Protest of counsel for Venezuela against..... 131

## AGREEMENT:

- Made by Venezuela, guaranteed adequate security to the allies; subsequent agreements with peace powers of no force or validity. Vattel cited in support..... 1261
- None formally made by Venezuela as to an exclusive or general assignment of the revenues..... 1058

## APPENDIXES. (*See following the Cases and Counter Cases of each country.*)

## ARGUMENTS. (*See* Finlay, MacVeagh, Penfield, Büinz, Cohen, Richards.)

## ARBITRATION:

- Causes operating to deter Venezuela from proposing..... 1133-1134
- Collective pressure and insistence would have produced acceptance by Venezuela ..... 1132
- Compulsory, attitude of Venezuela toward..... 413
- Conditions upon which Great Britain acquiesced in proposal for... 1221-1225
- Course of the United States with respect to..... 174-177
- Justice of claims between States should be settled by..... 1220
- No proposition for, was ever made by Great Britain prior to the blockade ..... 161, 1131
- Not proposed by Venezuela until after commencement of hostilities... 1220
- Not only not proposed by Venezuela prior to the blockade, but was refused by her when proposed by Germany..... 1305



## ARBITRATION—Continued.

Page.

|  |            |
|--|------------|
| Not compulsory, but absolutely voluntary with nations signatory to<br>The Hague Convention .....   | 1258       |
| Object of, as defined by The Hague Conference.....   | 156        |
| Policy of, will be harmed, not benefited, by attempts to ignore the<br>legitimate consequences of war.....   | 1239       |
| Proposed by Germany in 1901, but proposal was not renewed at any<br>later period when Venezuela was in a condition to accept.....  | 1132       |
| Question was referred to the Tribunal for arbitration because the<br>allies desired to end warlike measures; not through fear of inter-<br>vention by other creditor powers..... | 1251       |
| Refusal of, by Venezuela on the ground that she was engaged in sup-<br>pressing insurrection at the time of Germany's proposal in 1901<br>not in accord with the facts.....      | 1181       |
| Should have been insistently urged by the allies, in view of the minor<br>importance of their claims, rather than resort to war.....   | 1155       |
| Statement in the British case as to parties to, and their claims.....  | 754        |
| To be viewed from a different standpoint since The Hague Confer-<br>ence .....   | 181        |
| Venezuela persistently adverse to, claiming her laws did not permit<br>diplomatic intervention in foreign claims.....  | 1181       |
| Was availed of by Great Britain as soon as the opportunity was pre-<br>sented .....  | 1303, 1306 |
| When disputes can not be settled by, acts of war are reasonable.....   | 754        |

## ARBITRATORS:

|   |               |
|---|---------------|
| Names of.....   | 44            |
| Office of arbitrator tendered the President of the United States, but<br>declined ..... | 427, 680, 684 |

## ASSIGNMENT:

|  |            |
|--|------------|
| Exclusively to the allies, never assented to by Venezuela.....   | 934, 1057  |
| Is in absolute accord with the terms of the German protocol.....   | 1285       |
| Made by Venezuela to the allies estopped her from making later<br>agreements prejudicial to the rights so acquired by the allies.....                                      | 1186       |
| To pay claims of all creditor nations never acquiesced in by Ger-<br>many .....  | 992        |
| Was a contract offered by the allies and accepted by Venezuela.....  | 1269       |
| Was well understood to have been made by Venezuela to all the<br>creditor nations, proven by the correspondence, and was so inter-<br>preted by the allies themselves..... | 1281, 1284 |
| Was not voluntary, but in consideration of the raising of the<br>blockade .....  | 1265       |

AWARD OF THE TRIBUNAL (*See also* Decision):

|   |     |
|---|-----|
| English text .....  | 106 |
| French text.....  | 110 |
| Force and value of, as a precedent.....   | 15  |
| Importance of character of, discussed.....  | 232 |
| Protest of Herbert W. Bowen, agent of Venezuela, against a para-<br>graph of..... | 140 |
| Protest of the United States against the third clause of.....                     | 142 |

## "BAN RIGH," case of:

|   |                  |
|---|------------------|
| Action of the British Government in relation to, in accord with inter-<br>national law..... | 1210, 1304       |
| Cases of the <i>Alabama</i> and the <i>Caroline</i> cited as analogous..                    | 1156, 1159, 1164 |

|  |                                     |
|--|-------------------------------------|
| <b>"BAN RIGH," case of—Continued.</b>  | <b>Page.</b>                        |
| Conduct of Great Britain in relation to, criticised.....   | 1155-1160,<br>1164-1166, 1168, 1170 |
| Correspondence relating to.....  | 324-371                             |
| Discussion of, in refutation of the argument of Mr. MacVeagh....   | 1206-1210                           |
| Trifling character of British complaints as compared with.....   | 1160                                |
| Used by Venezuela as a pretext for refusing to discuss British complaints .....  | 1304                                |
| Venezuela entitled to the judgment of the Tribunal as to the character of the depredations of the <i>Ban Righ</i> .....              | 1168                                |
| <b>BANKRUPTCY:</b>   |                                     |
| Not recognized by international law as applicable to a State.....  | 976, 1248                           |
| Private laws relating to, not applicable to a State.....   | 1038                                |
| <b>BELGIAN CASE:</b>   |                                     |
| Protocols, interpretation of.....  | 866                                 |
| Equality of treatment, based upon law, equity, and the terms of the protocols of May 7, 1903.....                                    | 866                                 |
| Chinese Boxer indemnity cited in support of.....   | 867                                 |
| Preferential treatment, use of coercion by the blockading powers does not entitle them to.....                                       | 867                                 |
| Claims of Belgian subjects set forth.....  | 867                                 |
| <b>BELGIAN COUNTER CASE:</b>   |                                     |
| Belgian protocol, reservation of Italy in regard to, answered.....   | 1049                                |
| Blockade—  |                                     |
| Justice and legality of, not recognized by creditor powers.....  | 1049                                |
| Expenses incurred in, do not establish prior rights of powers instituting .....  | 1051                                |
| Equality of treatment, not to be denied because coercion was not used by creditor powers.....  | 1050                                |
| Customs revenues, not in possession of blockading powers when blockade was raised.....   | 1051                                |
| Claims protected by special securities should be recognized in the allotment of the customs revenues assigned by Venezuela.....      | 1052                                |
| <b>BELGIAN CLAIMS:</b>   |                                     |
| List of .....  | 867                                 |
| Caracas General Water Supply Company case.....   | 868, 985, 995, 1037                 |
| Paquet case.....   | 867                                 |
| Post-Office Department claim.....  | 867                                 |
| <b>BENEFITS DERIVED BY THE PEACE POWERS:</b>   |                                     |
| Contention of the allies that the peace powers are attempting to reap benefits from the action of the former, discussed.....         | 1296-1298                           |
| <b>BLOCKADE (See also Coercion):</b>   |                                     |
| Cessation of, its relation to the claim of the allies to preference.....   | 921                                 |
| Consideration on which it was raised was the promise by Venezuela of adequate security for the payment of the claims of the allies.. | 1319, 1322                          |
| Did not establish any prior right to powers instituting.....   | 1051                                |
| Equivalent to a state of war as instituted and maintained by the allies .....  | 157                                 |
| Expenses incurred in, no provision in protocols for reimbursement....  | 883                                 |
| Properly chargeable against Venezuela.....   | 815                                 |
| Grounds of its justification set forth.....  | 1247                                |
| Justice and legality of, never acquiesced in by the peace powers.....  | 1049                                |
| Justice or injustice of, not a question for the determination of the tribunal .....  | 989, 1245, 1247, 1329               |

|  |              |
|--|--------------|
| <b>BLOCKADE—Continued.</b>   | <b>Page.</b> |
| Justified by refusal of Venezuela to settle claims of diplomatic character .....   | 980          |
| Legal aspect of, as a means of enforcing demands .....   | 857          |
| Loss and detriment occasioned by, to the United States .....   | 431          |
| Pacific, must not extend to interference with the rights of neutral nations .....  | 1126, 1293   |
| Question of costs and expenses incurred in, not submitted to the tribunal .....  | 1274         |
| Results attained by, entitle allies to preference .....  | 965          |
| Not beneficial to the peace powers .....   | 433          |
| Whether to be considered as constituting a state of war, not material to the case .....                                  | 1126         |
| "BOLIVAR RAILWAY," case of .....   | 348          |
| <b>BONDED INDEBTEDNESS:</b>  |              |
| Method of its creation through the corruption of officials of South American countries .....                             | 1135         |
| <b>BONDS:</b>  |              |
| No precedent for extortion by force from another government of reimbursement for losses occasioned to investors in ..... | 1161         |
| Venezuelan, statement of amount of, issued in 1881 and 1896 .....  | 771          |
| <b>BOWEN, HERBERT W. (See also Venezuelan Case):</b>   |              |
| Brief of, in behalf of Venezuela .....   | 445          |
| Correspondence relating to his acting on behalf of Venezuela .....   | 372-382      |
| Correspondence of, in the negotiation of the protocols for the settlement of claims against Venezuela .....              | 382-406      |
| Credentials as Venezuelan plenipotentiary .....  | 382          |
| Protest of, against a paragraph in the Award of the Tribunal .....   | 140          |
| <b>BRITISH BLUE BOOK NO. 1, 1903:</b>  |              |
| Correspondence respecting affairs in Venezuela—  |              |
| Colonial Office to British Foreign Office, March 16, 1901 .....  | 457          |
| Sir A. Maloney to Mr. Chamberlain, February 24, 1901 .....   | 457          |
| Lansdowne to Mr. Duff, March 21, 1901 .....  | 465          |
| Mr. Duff to Lansdowne, March 22, 1901 .....  | 465          |
| Lansdowne to Mr. Duff, March 23, 1901 .....  | 465          |
| Mr. Duff to Lansdowne, March 26, 1901 .....  | 465          |
| Mr. Duff to Lansdowne, March 22, 1901 .....  | 466          |
| Mr. Duff to Lansdowne, March 23, 1901 .....  | 467          |
| Mr. Duff to Lansdowne, March 29, 1901 .....  | 469          |
| Foreign Office to Colonial Office, May 1, 1901 .....   | 471          |
| Mr. Duff to Lansdowne, April 17, 1901 .....  | 471          |
| Mr. Duff to Lansdowne, April 17, 1901 .....  | 473          |
| Mr. Duff to Lansdowne, April 17, 1901 .....  | 481          |
| Mr. Duff to Lansdowne, April 19, 1901 .....  | 486          |
| Mr. Duff to Lansdowne, April 19, 1901 .....  | 487          |
| Mr. Duff to Lansdowne, April 19, 1901 .....  | 488          |
| Mr. Haggard to Lansdowne, June 13, 1901 .....  | 488          |
| Mr. Haggard to Lansdowne, June 22, 1901 .....  | 491          |
| Mr. Haggard to Lansdowne, July 24, 1901 .....  | 492          |
| Lansdowne to Mr. Haggard, August 20, 1901 .....  | 496          |
| Mr. Haggard to Lansdowne, September 10, 1901 .....   | 496          |
| Mr. Haggard to Lansdowne, September 14, 1901 .....   | 499          |
| Mr. Haggard to Lansdowne, October 9, 1901 .....  | 500          |
| Mr. Haggard to Lansdowne, October 15, 1901 .....   | 502          |

**BRITISH BLUE BOOK No. 1, 1903—Continued.**

Page.

**Correspondence respecting affairs in Venezuela—Continued.**

|  |     |
|--|-----|
| Colonial Office to British Foreign Office, November 6, 1901.....         | 503 |
| Customs Commissioners to British Foreign Office, November 8, 1901 .....  | 507 |
| Customs Commissioners to British Foreign Office, November 14, 1901 ..... | 509 |
| Lansdowne to Mr. Haggard, November 15, 1901.....                         | 510 |
| Lansdowne to Señor Ponce, November 15, 1901.....                         | 510 |
| Señor Ponce to Lansdowne, November 15, 1901.....                         | 511 |
| Mr. Haggard to Lansdowne, November 21, 1901.....                         | 511 |
| British Foreign Office to Customs Commissioners, November 21, 1901 ..... | 511 |
| Mr. Haggard to Lansdowne, October 27, 1901.....                          | 512 |
| Customs Commissioners to British Foreign Office, November 21, 1901 ..... | 512 |
| Colonial Office to British Foreign Office, November 23, 1901.....        | 513 |
| Sir G. Perry to Lansdowne, November 28, 1901.....                        | 515 |
| British Foreign Office to Colonial Office, November 30, 1901.....        | 515 |
| Colonial Office to British Foreign Office, December 12, 1901.....        | 516 |
| Lansdowne to Mr. Haggard, December 16, 1901.....                         | 516 |
| Mr. Haggard to Lansdowne, November 26, 1901.....                         | 517 |
| Mr. Haggard to Lansdowne, December 31, 1901.....                         | 519 |
| Mr. Haggard to Lansdowne, December 5, 1901.....                          | 519 |
| Colonial Office to British Foreign Office, January 9, 1902.....          | 521 |
| Lansdowne to Mr. Jopp, January 10, 1902.....                             | 522 |
| Mr. Haggard to Lansdowne, November 20, 1901.....                         | 522 |
| Mr. Haggard to Lansdowne, December 25, 1901.....                         | 523 |
| British Foreign Office to Colonial Office, January 21, 1902.....         | 525 |
| Lansdowne to Mr. Haggard, January 23, 1902.....                          | 525 |
| Colonial Office to British Foreign Office, January 25, 1902.....         | 525 |
| Lansdowne to Mr. Haggard, January 31, 1902.....                          | 530 |
| Colonial Office to British Foreign Office, February 7, 1902.....         | 532 |
| Mr. Hudson to Lansdowne, February 7, 1902.....                           | 535 |
| Lansdowne to Mr. Hudson, February 8, 1902.....                           | 536 |
| Mr. Hudson to Lansdowne, February 11, 1902.....                          | 536 |
| Mr. Haggard to Lansdowne, January 24, 1902.....                          | 536 |
| Mr. Haggard to Lansdowne, January 25, 1902.....                          | 537 |
| Board of Trade to British Foreign Office, February 14, 1902.....         | 542 |
| Mr. Hudson to Lansdowne, February 3, 1902.....                           | 542 |
| Colonial Office to British Foreign Office, February 20, 1902.....        | 543 |
| Mr. Hudson to Lansdowne, February 10, 1902.....                          | 545 |
| Mr. Haggard to Lansdowne, February 23, 1902.....                         | 546 |
| Colonial Office to British Foreign Office, March 12, 1902.....           | 547 |
| Colonial Office to British Foreign Office, March 25, 1902.....           | 547 |
| Admiralty to British Foreign Office, March 26, 1902.....                 | 547 |
| Lansdowne to Mr. Haggard, March 26, 1902.....                            | 548 |
| Mr. Haggard to Lansdowne, March 3, 1902.....                             | 548 |
| Mr. Haggard to Lansdowne, March 7, 1902.....                             | 550 |
| Admiralty to British Foreign Office, March 29, 1902.....                 | 551 |
| Lansdowne to Mr. Welby, April 2, 1902.....                               | 552 |
| Señor Ponce to Lansdowne, April 3, 1902.....                             | 552 |
| Lansdowne to Mr. Haggard, April 5, 1902.....                             | 552 |

| BRITISH BLUE BOOK No. 1, 1903—Continued.                                     | Page. |
|--|-------|
| Correspondence respecting affairs in Venezuela—Continued.                    |       |
| Colonial Office to British Foreign Office, April 8, 1902-----                | 553   |
| Mr. Haggard to Lansdowne, March 14, 1902-----                                | 553   |
| Colonial Office to British Foreign Office, April 11, 1902-----               | 555   |
| Lansdowne to Señor Ponce, April 11, 1902-----                                | 559   |
| Señor Ponce to Lansdowne, April 14, 1902-----                                | 560   |
| British Foreign Office to Colonial Office, April 15, 1902-----               | 560   |
| Colonial Office to British Foreign Office, April 17, 1902-----               | 560   |
| Mr. Haggard to Lansdowne, March 26, 1902-----                                | 561   |
| Mr. Haggard to Lansdowne, March 30, 1902-----                                | 562   |
| Mr. Haggard to Lansdowne, April 1, 1902-----                                 | 562   |
| Colonial Office to British Foreign Office, May 13, 1902-----                 | 564   |
| Memorandum respecting the S. S. <i>Ran Righ</i> , May 19, 1902-----          | 575   |
| Colonial Office to British Foreign Office, May 29, 1902-----                 | 577   |
| Mr. Haggard to Lansdowne, May 16, 1902-----                                  | 581   |
| Lansdowne to Mr. Haggard, June 9, 1902-----                                  | 581   |
| Colonial Office to British Foreign Office, June 11, 1902-----                | 582   |
| Mr. Dickson to Lansdowne, May 7, 1902-----                                   | 585   |
| Mr. Haggard to Lansdowne, May 31, 1902-----                                  | 585   |
| British Foreign Office to Colonial Office, June 24, 1902-----                | 589   |
| Colonial Office to British Foreign Office, June 25, 1902-----                | 589   |
| Mr. Dickson to Lansdowne, May 14, 1902-----                                  | 592   |
| British Foreign Office to Colonial Office, July 1, 1902-----                 | 593   |
| Mr. Haggard to Lansdowne, June 14, 1902-----                                 | 594   |
| Mr. Haggard to Lansdowne, June 14, 1902-----                                 | 595   |
| Lansdowne to Mr. Haggard, July 3, 1902-----                                  | 596   |
| British Foreign Office to Colonial Office, July 4, 1902-----                 | 596   |
| Colonial Office to British Foreign Office, July 4, 1902-----                 | 597   |
| Colonial Office to British Foreign Office, July 8, 1902-----                 | 604   |
| Colonial Office to British Foreign Office, July 9, 1902-----                 | 604   |
| Lansdowne to Mr. Haggard, July 10, 1902-----                                 | 605   |
| Lansdowne to Mr. Haggard, July 11, 1902-----                                 | 605   |
| British Foreign Office to Colonial Office, July 14, 1902-----                | 605   |
| Mr. Haggard to Lansdowne, June 24, 1902-----                                 | 606   |
| Mr. Haggard to Lansdowne, June 30, 1902-----                                 | 606   |
| Mr. Haggard to Lansdowne, July 20, 1902-----                                 | 608   |
| Memorandum on causes of complaints against Venezuela, July 20,<br>1902 ----- | 608   |
| Lansdowne to Mr. Buchanan, July 23, 1902-----                                | 613   |
| Lansdowne to Mr. Haggard, July 29, 1902-----                                 | 613   |
| Mr. Haggard to Lansdowne, July 12, 1902-----                                 | 614   |
| Mr. Haggard to Lansdowne, July 13, 1902-----                                 | 616   |
| Mr. Haggard to Lansdowne, July 13, 1902-----                                 | 616   |
| Mr. Haggard to Lansdowne, August 5, 1902-----                                | 617   |
| British Foreign Office to Admiralty, August 8, 1902-----                     | 617   |
| Colonial Office to British Foreign Office, August 11, 1902-----              | 618   |
| Mr. Haggard to Lansdowne, July 17, 1902-----                                 | 621   |
| Mr. Haggard to Lansdowne, July 19, 1902-----                                 | 621   |
| Mr. Haggard to Lansdowne, July 27, 1902-----                                 | 622   |
| Admiralty to British Foreign Office, August 14, 1902-----                    | 623   |
| Colonial Office to British Foreign Office, August 19, 1902-----              | 623   |
| Mr. Haggard to Lansdowne, August 1, 1904-----                                | 624   |
| Mr. Haggard to Lansdowne, August 4, 1902-----                                | 626   |

## BRITISH BLUE BOOK No. 1, 1903—Continued.

Page.

## Correspondence respecting affairs in Venezuela—Continued.

|   |     |
|---|-----|
| Mr. Haggard to Lansdowne, August 23, 1902.....                    | 628 |
| Admiralty to British Foreign Office, October 10, 1902.....        | 629 |
| Colonial Office to British Foreign Office, October 14, 1902.....  | 629 |
| Memorandum to the German Ambassador, October 22, 1902.....        | 630 |
| British Foreign Office to Admiralty, October 22, 1902.....        | 632 |
| Mr. Haggard to Lansdowne, October 2, 1902.....                    | 632 |
| Mr. Haggard to Lansdowne, October 2, 1902.....                    | 633 |
| Lansdowne to Mr. Haggard, October 25, 1902.....                   | 635 |
| Lansdowne to Mr. Haggard, October 25, 1902.....                   | 635 |
| Admiralty to British Foreign Office, October 28, 1902.....        | 635 |
| Lansdowne to Sir M. Herbert, November 11, 1902.....               | 635 |
| Lansdowne to Mr. Haggard, November 11, 1902.....                  | 636 |
| Lansdowne to Mr. Buchanan, November 11, 1902.....                 | 637 |
| Memorandum from German Ambassador, November 13, 1902.....         | 637 |
| Sir M. Herbert to Lansdowne, November 13, 1902.....               | 638 |
| Colonial Office to British Foreign Office, November 15, 1902..... | 639 |
| Lansdowne to Mr. Buchanan, November 17, 1902.....                 | 640 |
| Lansdowne to Mr. Buchanan, November 17, 1902.....                 | 641 |
| Mr. Haggard to Lansdowne, November 17, 1902.....                  | 642 |
| Mr. Haggard to Lansdowne, October 28, 1902.....                   | 643 |
| Mr. Haggard to Lansdowne, October 28, 1902.....                   | 644 |
| Mr. Haggard to Lansdowne, October 28, 1902.....                   | 644 |
| Mr. Haggard to Lansdowne, October 29, 1902.....                   | 646 |
| Lansdowne to Mr. Haggard, November 21, 1902.....                  | 647 |
| Lansdowne to Sir M. Herbert, November 25, 1902.....               | 648 |
| Lansdowne to Mr. Haggard, November 25, 1902.....                  | 648 |
| Lansdowne to Mr. Haggard, November 25, 1902.....                  | 648 |
| Admiralty to British Foreign Office, November 25, 1902.....       | 648 |
| Sir M. Herbert to Lansdowne, November 26, 1902.....               | 649 |
| Lansdowne to Mr. Buchanan, November 26, 1902.....                 | 649 |
| Lansdowne to Mr. Buchanan, November 26, 1902.....                 | 650 |
| Admiralty to British Foreign Office, November 27, 1902.....       | 652 |
| Lansdowne to Sir M. Herbert, November 27, 1902.....               | 652 |
| Lansdowne to Mr. Haggard, November 27, 1902.....                  | 653 |
| Memorandum from French Ambassador, November 28, 1902.....         | 653 |
| British Foreign Office to Admiralty, November 28, 1902.....       | 654 |
| Lansdowne to Mr. Buchanan, December 1, 1902.....                  | 655 |
| Lansdowne to Mr. Haggard, December 2, 1902.....                   | 656 |
| Sir R. Rodd to Lansdowne, December 3, 1902.....                   | 657 |
| Mr. Haggard to Lansdowne, November 15, 1902.....                  | 658 |
| Mr. Haggard to Lansdowne, November 17, 1902.....                  | 660 |
| Lansdowne to M. Cambon, December 5, 1902.....                     | 662 |
| Lansdowne to Sir R. Rodd, December 5, 1902.....                   | 663 |
| British Foreign Office to Admiralty, December 6, 1902.....        | 664 |
| Mr. Haggard to Lansdowne, December 7, 1902.....                   | 664 |
| Mr. Haggard to Lansdowne, December 8, 1902.....                   | 665 |
| Admiralty to British Foreign Office, December 9, 1902.....        | 665 |
| Lansdowne to Mr. Buchanan, December 9, 1902.....                  | 665 |
| Mr. Haggard to Lansdowne, December 9, 1902.....                   | 666 |
| Mr. Haggard to Lansdowne, December 10, 1902.....                  | 666 |
| Mr. Haggard to Lansdowne, December 10, 1902.....                  | 666 |
| Admiralty to British Foreign Office, December 11, 1902.....       | 667 |



## BRITISH BLUE BOOK No. 1, 1903—Continued.

Page.

## Correspondence respecting affairs in Venezuela—Continued.

|   |     |
|---|-----|
| Sir M. Herbert to Lansdowne, December 10, 1902.....         | 667 |
| Sir M. Herbert to Lansdowne, December 11, 1902.....         | 668 |
| Sir M. Herbert to Lansdowne, December 11, 1902.....         | 668 |
| Sir M. Herbert to Lansdowne, December 11, 1902.....         | 668 |
| Mr. Haggard to Lansdowne, December 11, 1902.....            | 669 |
| Lansdowne to Mr. Buchanan, December 11, 1902.....           | 669 |
| Lansdowne to Mr. Buchanan, December 13, 1902.....           | 672 |
| Admiralty to British Foreign Office, December 12, 1902..... | 670 |
| Lansdowne to Sir M. Herbert, December 12, 1902.....         | 671 |
| Mr. White to Lansdowne, December 13, 1902.....              | 672 |
| Lansdowne to Sir M. Herbert, December 11, 1902.....         | 669 |
| Mr. Haggard to Lansdowne, December 14, 1902.....            | 673 |
| Mr. Haggard to Lansdowne, December 14, 1902.....            | 673 |
| M. Grenier to Lansdowne, December 14, 1902.....             | 673 |
| Lansdowne to Mr. Buchanan, December 15, 1902.....           | 674 |
| Lansdowne to Sir M. Herbert, December 15, 1902.....         | 675 |
| Admiralty to British Foreign Office, December 16, 1902..... | 675 |
| Lansdowne to Mr. Buchanan, December 16, 1902.....           | 676 |
| Memorandum from German Ambassador, December 17, 1902.....   | 677 |
| Lansdowne to Sir M. Herbert, December 17, 1902.....         | 677 |
| Mr. Haggard to Lansdowne, November 27, 1902.....            | 678 |
| Admiralty to British Foreign Office, December 18, 1902..... | 679 |
| Sir A. Douglas to Admiralty, December 17, 1902.....         | 679 |
| Lansdowne to Sir M. Herbert, December 18, 1902.....         | 679 |
| Lansdowne to Sir F. Lascelles, December 18, 1902.....       | 680 |
| British Foreign Office to Admiralty, December 18, 1902..... | 681 |
| M. Delcasse to M. Cambon, December 18, 1902.....            | 682 |
| Admiralty to British Foreign Office, December 19, 1902..... | 683 |
| Mr. White to Lansdowne, December 19, 1902.....              | 683 |
| Lansdowne to Mr. White, December 19, 1902.....              | 684 |
| Lansdowne to Baron Grenier, December 19, 1902.....          | 684 |
| Extract from London Gazette, December 20, 1902.....         | 685 |
| Lansdowne to Sir F. Lascelles, December 22, 1902.....       | 685 |
| Lansdowne to Sir M. Herbert, December 22, 1902.....         | 686 |
| British Memorandum to Mr. White, December 23, 1902.....     | 687 |
| Lansdowne to Sir M. Herbert, December 23, 1902.....         | 689 |
| Lansdowne to Sir R. Rodd, December 26, 1902.....            | 689 |
| Mr. White to Lansdowne, December 27, 1902.....              | 690 |
| Lansdowne to Sir M. Herbert, December 27, 1902.....         | 691 |
| Lansdowne to Sir F. Lascelles, December 30, 1902.....       | 691 |
| Mr. White to Lansdowne, January 1, 1903.....                | 692 |
| Lansdowne to Sir M. Herbert, January 1, 1903.....           | 692 |
| Mr. Haggard to Lansdowne, December 14, 1902.....            | 693 |
| Sir M. Herbert to Lansdowne, December 19, 1902.....         | 696 |
| Lansdowne to Sir F. Lascelles, January 2, 1903.....         | 696 |
| Lansdowne to Sir R. Rodd, January 2, 1902.....              | 698 |
| Lansdowne to Sir F. Lascelles, January 3, 1903.....         | 698 |
| Lansdowne to Mr. White, January 5, 1903.....                | 699 |
| Lansdowne to Sir F. Lascelles, January 5, 1903.....         | 700 |
| Lansdowne to Sir R. Rodd, January 5, 1903.....              | 700 |
| Lansdowne to Sir R. Rodd, January 7, 1903.....              | 700 |
| Sir M. Herbert to Lansdowne, December 28, 1902.....         | 701 |

## BRITISH BLUE BOOK No. 1, 1903—Continued.

Page.

## Correspondence respecting affairs in Venezuela—Continued.

|   |     |
|---|-----|
| Sir R. Rodd to Lansdowne, January 8, 1903.....            | 702 |
| Mr. White to Lansdowne, January 9, 1903.....              | 702 |
| Lansdowne to Mr. White, January 9, 1903.....              | 703 |
| Admiralty to British Foreign Office, January 8, 1903..... | 703 |
| Memorandum from German Ambassador, January 10, 1903.....  | 716 |
| Mr. Haggard to Lansdowne, December 19, 1902.....          | 717 |
| Proclamation by General Castro, December 9, 1902.....     | 717 |
| Lansdowne to Sir M. Herbert, January 12, 1903.....        | 718 |
| Lansdowne to Sir M. Herbert, January 13, 1903.....        | 719 |
| Haggard to Lansdowne, December 30, 1902.....              | 727 |
| Lansdowne to Sir F. Lascelles, January 15, 1903.....      | 729 |
| Lansdowne to Sir M. Herbert, January 16, 1903.....        | 731 |
| Sir M. Herbert to Lansdowne, January 21, 1903.....        | 731 |
| Lansdowne to Sir M. Herbert, January 21, 1903.....        | 731 |
| Sir M. Herbert to Lansdowne, January 23, 1903.....        | 732 |
| Lansdowne to Sir M. Herbert, January 24, 1903.....        | 732 |
| Sir M. Herbert to Lansdowne, January 24, 1903.....        | 733 |
| Sir M. Herbert to Lansdowne, January 24, 1903.....        | 733 |
| Sir M. Herbert to Lansdowne, January 25, 1903.....        | 734 |
| Lansdowne to Sir M. Herbert, January 26, 1903.....        | 734 |
| Sir M. Herbert to Lansdowne, January 27, 1903.....        | 735 |
| Sir M. Herbert to Lansdowne, January 27, 1903.....        | 736 |
| Lansdowne to Sir F. Lascelles, January 27, 1903.....      | 736 |
| Sir M. Herbert to Lansdowne, January 28, 1903.....        | 737 |
| Lansdowne to Sir M. Herbert, January 28, 1903.....        | 737 |
| Sir M. Herbert to Lansdowne, January 29, 1903.....        | 738 |
| Lansdowne to Sir M. Herbert, January 29, 1903.....        | 738 |
| Lansdowne to Sir F. Lascelles, January 29, 1903.....      | 738 |
| Lansdowne to Sir M. Herbert, January 30, 1903.....        | 739 |
| Lansdowne to Sir M. Herbert, February 1, 1903.....        | 741 |
| Lansdowne to Sir M. Herbert, February 2, 1903.....        | 741 |
| Sir M. Herbert to Lansdowne, February 2, 1903.....        | 742 |
| Lansdowne to Sir M. Herbert, February 3, 1903.....        | 742 |
| Sir M. Herbert to Lansdowne, February 3, 1903.....        | 742 |
| Sir M. Herbert to Lansdowne, February 4, 1903.....        | 743 |
| Lansdowne to Sir M. Herbert, February 4, 1903.....        | 743 |
| Lansdowne to Sir M. Herbert, February 4, 1903.....        | 743 |
| Sir M. Herbert to Lansdowne, February 5, 1903.....        | 744 |
| Lansdowne to Sir M. Herbert, February 5, 1903.....        | 744 |
| Lansdowne to Sir M. Herbert, February 5, 1903.....        | 746 |
| Sir M. Herbert to Lansdowne, February 6, 1903.....        | 747 |
| Lansdowne to Sir F. Lascelles, February 6, 1903.....      | 747 |
| Sir M. Herbert to Lansdowne, February 7, 1903.....        | 747 |
| Lansdowne to Sir M. Herbert, February 7, 1903.....        | 748 |
| Sir M. Herbert to Lansdowne, February 13, 1903.....       | 748 |
| Lansdowne to Sir M. Herbert, February 14, 1903.....       | 748 |

## BRITISH CASE:

|                                    |     |
|------------------------------------|-----|
| Introductory statement .....       | 752 |
| Claims of British subjects—        |     |
| Venezuela admitted justice of..... | 753 |
| Amount of, unpaid .....            | 753 |

## BRITISH CASE—Continued.

Page.

|  |          |
|--|----------|
| Equal treatment of powers at variance with international practice and equity.....  | 753      |
| Enforcement of claims, no steps taken by other creditor powers.....  | 753      |
| Statement of question before the Tribunal.....   | 754      |
| Parties to the arbitration and their claims.....   | 754, 755 |
| Statement of facts .....   | 755      |
| Financial condition of Venezuela discussed.....  | 755-757  |
| British grievances and demand for redress.....   | 757      |
| Measures of force to secure redress.....   | 759      |
| Negotiations with Venezuela—   |          |
| Proposals by Venezuela for arbitration.....  | 759      |
| British contention that custom-houses were to secure claims of blockading powers .....                                     | 760      |
| Attitude of nonblockading powers.....  | 763      |
| Preferential treatment contended for .....   | 764      |
| Claims of nonblockading powers had no priority.....  | 764      |
| Equal treatment, right of, can not be requested on any legal basis.....  | 765      |
| Coercion, resort to, sanctioned by usage of nations to compel compliance with just demands.....                            | 765      |
| Serves the purposes of the individual nation putting into effect, and confers no advantage or rights on third parties..... | 765      |
| Equitable rights, question considered as to whether nonblockading powers have any.....                                     | 765      |
| Private law analogies considered.....  | 765      |
| Securities realized as result of blockade entitle allies to priority of payment.....                                       | 766      |

## BRITISH CASE APPENDIX :

Correspondence relating to the blockade of Venezuelan ports and subsequent negotiations for its termination—

|  |     |
|--|-----|
| Venezuelan loans of 1881 and 1896, memorandum on.....                            | 771 |
| Memorandum on causes of complaint against Venezuela.....                         | 773 |
| Mr. Haggard to Doctor Baralt, July 30, 1902.....                                 | 778 |
| Doctor Baralt to Mr. Haggard, August 2, 1902.....                                | 778 |
| Memorandum of British Foreign Office to German Ambassador, October 22, 1902..... | 780 |
| Mr. Haggard to Doctor Baralt, November 11, 1902.....                             | 782 |
| Lansdowne to Sir M. Herbert, November 11, 1902.....                              | 782 |
| Sir M. Herbert to Lansdowne, November 13, 1902.....                              | 783 |
| Doctor Baralt to Mr. Haggard, November 14, 1902.....                             | 783 |
| Memorandum of the French Ambassador, November 28, 1902.....                      | 785 |
| Lansdowne to M. Cambon, December 5, 1902.....                                    | 786 |
| Mr. Haggard to Doctor Baralt, December 7, 1902.....                              | 786 |
| Doctor Baralt to Mr. Haggard, December 9, 1902.....                              | 787 |
| Mr. Haggard to Lansdowne, December 10, 1902.....                                 | 789 |
| Mr. White to Lansdowne, December 13, 1902.....                                   | 790 |
| M. Grénier to Lansdowne, December 14, 1902.....                                  | 790 |
| M. Delcassé to M. Cambon, December 18, 1902.....                                 | 790 |
| Lansdowne to Baron Grénier, December 19, 1902.....                               | 791 |
| Mr. White to Lansdowne, December 19, 1902.....                                   | 791 |
| Extract from London Gazette, December 20, 1902.....                              | 792 |
| Memorandum from Foreign Office to Mr. White, December 23, 1902 .....             | 792 |
| Mr. White to Lansdowne, December 27, 1902.....                                   | 794 |

## BRITISH CASE APPENDIX—Continued.

Page.

Correspondence relating to the blockade of Venezuelan ports, etc.—  
Continued.

|  |     |
|--|-----|
| Mr. White to Lansdowne, January 1, 1903.....         | 795 |
| Lansdowne to Mr. White, January 5, 1903.....         | 795 |
| Mr. White to Lansdowne, January 9, 1903.....         | 796 |
| Lansdowne to Sir M. Herbert, January 12, 1903.....   | 797 |
| Lansdowne to Sir M. Herbert, January 13, 1903.....   | 798 |
| Lansdowne to Sir F. Lascelles, January 15, 1903..... | 801 |
| Lansdowne to Sir M. Herbert, January 16, 1903.....   | 801 |
| Sir M. Herbert to Lansdowne, January 21, 1903.....   | 802 |
| Lansdowne to Sir M. Herbert, January 21, 1903.....   | 802 |
| Sir M. Herbert to Lansdowne, January 23, 1903.....   | 802 |
| Sir M. Herbert to Lansdowne, January 24, 1903.....   | 803 |
| Lansdowne to Sir M. Herbert, January 24, 1903.....   | 803 |
| Sir M. Herbert to Lansdowne, January 25, 1903.....   | 804 |
| Lansdowne to Sir M. Herbert, January 26, 1903.....   | 805 |
| Sir M. Herbert to Lansdowne, January 27, 1903.....   | 806 |
| Lansdowne to Sir M. Herbert, January 28, 1903.....   | 807 |
| Sir M. Herbert to Lansdowne, January 29, 1903.....   | 807 |
| Lansdowne to Sir M. Herbert, January 30, 1903.....   | 808 |
| Lansdowne to Sir M. Herbert, February 1, 1903.....   | 809 |
| Extract from London Gazette, February 17, 1903.....  | 810 |

## BRITISH COUNTER CASE:

|  |         |
|--|---------|
| Introductory statement.....  | 937     |
| Statement of facts—  |         |
| British complaints and refusal of Venezuela to discuss them....  | 939     |
| <i>Ban Righ</i> case, contentions of Venezuela with respect to, discussed .....  | 941     |
| Action of blockading powers.....   | 944     |
| Negotiations after commencement of hostilities.....  | 945     |
| Creditor powers, respective positions of, at time of signing of protocols .....  | 962     |
| British contentions for preferential treatment based upon—   |         |
| Venezuela's agreement to assign customs receipts to the allies....   | 964     |
| Necessity for blockade and its results.....  | 965     |
| Circumstances existing at time of blockade.....  | 967     |
| Answer to contentions of the United States.....  | 967     |
| Arguments of United States and Venezuela, distinct from those of other powers.....   | 974     |
| Creditor powers, answer to claim of that <i>onus probandi</i> is on blockading powers as to their right to preferential treatment..... | 974-975 |
| Blockading powers, contend onus is on other powers to establish right to share <i>pari passu</i> .....                                 | 974     |
| Equal rights of all powers—proposition true, but subject to limitations according to circumstances.....                                | 975     |
| Bankruptcy, not recognized by international law as applicable to a nation .....  | 976     |
| Vested interests of creditor powers, not affected by assignment of customs revenues to allies.....                                     | 977     |
| Separate settlements, can be effected between nations provided rights of other nations are not prejudiced.....                         | 978     |
| Chinese Boxer Indemnity, not a precedent in this case.....   | 979     |

## BRITISH COUNTER CASE—Continued.

Page.

## Preferential treatment—

|   |     |
|---|-----|
| Blockading powers entitled to, in accordance with Venezuela's promise of adequate security.....                             | 980 |
| Relative situation of creditor powers and allies demonstrates right of latter to.....                                       | 981 |
| Conduct of creditor powers now estops them from objecting to...   | 982 |
| Answer to contention that blockading powers had already secured preference .....  | 982 |
| Answer to contention that blockading powers did not demand immediate settlement of their second-rank claims.....            | 982 |
| Answer to contention that blockading powers should be deprived by the Tribunal of advantages gained by coercive action..... | 983 |
| Equality of treatment, analogies in private law do not support claim for .....  | 983 |
| Answer to Belgian contention that securities can not be pledged as a result of force.....                                   | 984 |
| French claims considered.....   | 984 |
| Belgian claim (Caracas Water Supply Company) considered.....  | 985 |
| Prior securities held by other creditor powers, should not rank against security in dispute.....                            | 986 |
| Chinese Boxer indemnity, statement by Mr. Tower respecting.....   | 986 |

## BRITISH CLAIMS:

|  |  |
|--|--|
| Amount of, unpaid.....                                   | 753  |
| Memorandum on, and list of.....                          | 190, 200, 780  |
| Specially discussed.....                                 | 436, 1140-1148, 1151-1155                            |
| Correspondence relating to special complaints—           |  |
| Case of James N. Kelly.....                              | 192, 466, 659  |
| Case of the <i>In Time</i> .....                         | 200, 582-584, 605, 614, 621, 628, 776                |
| Case of the Bolivar Railway.....                         | 348  |
| Case of the <i>Maria Teresa</i> .....                    | 194, 473, 481, 492-501, 521, 525                     |
| Case of the <i>Indiana</i> .....                         | 199, 526-530, 543, 597, 775                          |
| Case of the <i>Queen</i> .....                           | 606, 612, 617, 776                                   |
| Case of the <i>Racer</i> .....                           | 639, 646, 648  |
| Case of the <i>Harry Troop</i> .....                     | 727  |
| Case of John A. Sampty.....                              | 645, 648   |
| Case of seizure of British subjects at Patos Island..... | 190, 457, 465, 470-472, 486, 491, 503, 516, 523, 773 |
| Case of the <i>Sea Horse</i> .....                       | 195, 482, 488, 496, 774                              |
| Case of the <i>Buena Fe</i> .....                        | 481-484  |
| Case of the <i>Pastor</i> .....                          | 197, 504, 512, 775                                   |
| "BUENA FE," case of.....                                 | 481-484  |

## BÜNZ, M.:

## Argument in behalf of Germany—

## Arbitration—

|  |      |
|--|------|
| Refusal of, by Venezuela on the ground that she was engaged in suppressing insurrection at the time of Germany's proposal in 1901, not in accord with the facts..... | 1181 |
|--|------|

|  |      |
|--|------|
| Action of Germany throughout the negotiations was conciliatory and moderate..... | 1180 |
|--|------|

## Assignment—

|   |      |
|---|------|
| Made by Venezuela to the allies estopped her from making later agreements prejudicial to the rights so acquired by the allies ..... | 1186 |
|---|------|

**BÜNZ, M.—Continued.****Argument in behalf of Germany—Continued.****Chinese indemnity—**

Can not be considered as a precedent because of dissimilar circumstances of the cases..... 1182, 1184

**Claims—**

Adjustment of, by an amicable arrangement with Venezuela had been vainly insisted upon..... 1178

Justice of, admitted by Venezuela..... 1179

"First rank," immediate payment of, by Venezuela did not impair the right of Germany to request preference in the settlement of her other claims..... 1180

"First rank," demand for their immediate payment made in order to prove Venezuela's intention to fulfill her obligations ..... 1183

Belgian, being already guaranteed by Venezuela, should not be held as a charge against the revenues realized by the allies ..... 1192

**Coercion—**

Justice or injustice of use of, not subject to determination by the Tribunal, nor material to the case..... 1178

The use of, by the allies can not be complained of, as Venezuela had refused arbitration or, in fact, diplomatic settlement of any kind..... 1184

**Expenses of blockade—**

Right to demand reimbursement for, renounced by the allies only on condition that preferential treatment be accorded them ..... 1194

**Equality of States—**

Principle of, not denied nor is it material to the present case, as no rights of other powers have been curtailed by the acts of the allies..... 1190

**Equality of treatment—**

Protocol of February 13, 1903, can not be so construed as to prove consent by Germany to the equal treatment of all creditor nations..... 1183, 1187

**Equity—**

Proposition that "equality is equity" can not be accepted by Germany as applicable to the present case ..... 1181, 1183

Can not be invoked in support of the peace powers on the ground that they have suffered injury due to the action of the allies, the allegation of injury not being true ..... 1196

On the contrary, principle of, can be invoked by the allies in support of their contention that preference should be given to the payment of their claims..... 1196

Hypothecation for the benefit of a creditor, applied by analogy to the case of Venezuela, sustains claim of preference for the allies..... 1196

**Intervention—**

Form of, dependent upon the circumstances of the particular case..... 1181

Right of, to protect the lives, property, and liberty of citizens from arbitrary and unlawful acts of a foreign government, a national duty which can not be denied..... 1181



**BÜNZ, M.—Continued.****Argument in behalf of Germany—Continued.***Negotiorum gestio*—

If principles of, are to be applied to the action of the allies,  
the obligation rests upon the other powers to refund part  
of the expenses incurred by the former ----- 1198

**Preferential treatment—**

Bases of the claim for, on the part of Germany ----- 1179

Not asked as a reward of merit, but as a right growing out  
of the necessary use of force and the expenses incurred  
therein ----- 1181

If granted by the tribunal to one of the allies, must be  
granted to all ----- 1182

Would not seriously cripple Venezuela's administration of  
her finances ----- 1182

Demanded by the allies as a matter of law and equity for  
serving the cause of the peace powers by the military oper-  
ations against Venezuela ----- 1185, 1188

Due the allies because their action produced a pledge from  
Venezuela that she would settle their claims ----- 1186

Legal title to, obtained by the allies when they secured the  
pledge of customs revenues from Venezuela ----- 1194

Claim for, founded not so much on principles of equity as  
upon principles of law ----- 1198

**Responsibility of the allies—**

Equal responsibility of all the allies for acts done by each  
of them accepted by Germany ----- 1182

**Security—**

Proposition that customs revenues assigned as, should be  
used to satisfy claims of the creditor powers never assented  
to by Germany ----- 1180

Customs revenues were acquired by the allies and no nego-  
tiations, subsequently undertaken by Venezuela, can impair  
this acquired right ----- 1179

Assignment of, was not a voluntary act on the part of Vene-  
zuela, but an act due to the use of coercion ----- 1195

Possession of, in the shape of the customs-houses, was held  
by the allies at the time of signing of the protocols of  
February 13, 1903 ----- 1193

Adequacy of, for the payment of all her claims always in-  
sisted upon by Germany ----- 1183

**CARACAS GENERAL WATER SUPPLY COMPANY, case of** ----- 868,  
985, 995, 1037

**CHINESE BOXER INDEMNITY (See also Precedents) :**

Apportionment of, among the different powers ----- 420

Cited as a precedent in support of peace powers ----- 150,  
888, 919, 1030, 1120, 1175, 1297

Can not be considered as a precedent because of the dissimilar cir-  
cumstances of the cases ----- 1182, 1184

Its pertinency as a precedent disputed ----- 979, 993, 1200-1202

Statement of Mr. Tower with respect to ----- 986

**CITATIONS :****On international contracts—**

Wheaton (International Law, p. 387) ----- 861

## CITATIONS—Continued.

Page.

## On international contracts—Continued.

Vattel (*Droit des Gens*, II, ch. 16, secs. 235-239) ..... 861Klüber (*Droit des Gens, Moderne de l'Europe*, Pt. II, tit. 2, Sut. 1, ch. 2, secs. 157, 158) ..... 861Rivier (*Principes du Droit des Gens*, sec. 52) ..... 861Pradier Fodere (*Droit International Public*, T. II, p. 1169) ..... 861De Martens (*Précis*, sec. 63) ..... 861Phillimore (*International Law*, II, Ch. IX) ..... 862-Bluntschli (*International Law*, sec. 414) ..... 862Hall (*International Law*, Ch. X, sec. 112) ..... 862

## On use of coercion by nations to secure redress—

Wheaton (*Ibid.*, sec. 267) ..... 984Bluntschli (*Code of International Law*, sec. 408) ..... 984De Martens (*Précis*, 2d ed., II, ch. 2, secs. 50, 52) ..... 984

## On the effect of treaties on third parties—

Flore (*International Law*, par. 661) ..... 916

## On equality of States—

Bluntschli (*Ibid.*, art. 81) ..... 914Flore (*Code of International Law*, art. 358) ..... 914Phillimore (*Ibid.*, 3d ed., CXLVII) ..... 914

## On the relations of neutrals to belligerents—

Bluntschli (*Ibid.*, art. 783) ..... 917

## On the right of nations to enter upon war to secure satisfaction of claims—

Rivier (*Ibid.*, 2d vol. *Principes du Droit des Gens*, pp. 202-203) .. 1246Hall (*Ibid.*, 4th ed., p. 63) ..... 1246

## On the validity of international contracts extorted by force—

Wheaton (*Ibid.*, sec. 267) ..... 1255Woolsey (*International Law*, secs. 408 and 409) ..... 1255Hall (*Ibid.*, p. 341) ..... 1255Vattel (*Law of Nations*) ..... 1261

## On equity—

Story (*Equity Jurisprudence*, p. 64) ..... 1261Maine (*Ancient Law*, p. 59) ..... 1261

## CIVIL LAW:

Analogies in, applicable to the question ..... 883, 1110

Application of principles of, to the question of preferential treatment ..... 880, 1094

CLAIMS (*See also* under Belgian Claims, British Claims, etc.):

Adjustment of, by an amicable arrangement with Venezuela, had been vainly insisted upon by Germany ..... 1178

Advantage of priority in payment of, not conferred on allies by conditions at time of signature of protocols ..... 1063

Amount of, allowed and outstanding against Venezuela ..... 1292, 1326

Awards of, by mixed commissions ..... 182, 418, 1138

Contention of Venezuela that the justice of the German claims was determined *ex parte* ..... 994

Contractual, how they should be dealt with ..... 443

Digest of negotiations between Great Britain and Venezuela for settlement of ..... 759

Enforcement of payment, due solely to action of the allies ..... 753

"First rank," peremptory demand for immediate payment of, indefensible ..... 178

## CLAIMS—Continued.

Page.

## "First rank," etc.—Continued.

|  |                      |
|--|----------------------|
| Demand for immediate payment of, did not impair right of Germany to request preference in the settlement of her other claims .....   | 1180                 |
| Justice of, admitted by Venezuela; consideration may be given, however, to such claims as were recognized or paid without revision .....   | 753, 931, 1179, 1274 |
| Negotiations for the settlement of claims of the allies were to be conducted separately .....  | 1319-1321            |
| No security held by the United States for the payment of, awarded by mixed commissions .....   | 431                  |
| Of a neutral against a belligerent can not be affected by a state of war .....   | 917                  |
| Of nonblockading powers had no priority .....  | 764                  |
| Order of payment of, not affected by order of signature of protocols .....   | 1059                 |
| Pecuniary, in view of the evil repute of, should be submitted to arbitration to determine their justice .....  | 1138                 |
| Experience of the United States with respect to .....  | 1138                 |
| Peremptory demand for payment of, was made by the allies without impartial examination into their justice .....  | 1140                 |
| Procedure of nations in relation to, should be modified to meet the spirit of The Hague Convention .....   | 1138                 |
| Proposal for direct settlement of, instead of by arbitration—correspondence relating to, discussed .....   | 1223-1229            |
| Refusal of Venezuela to settle, justified the use of coercion .....  | 989, 1020            |
| Settlement of, by peaceful means always desired by Great Britain .....   | 1303                 |
| Delayed by Venezuela until she had suppressed insurrection .....   | 931                  |
| Should be brought before The Hague Tribunal for settlement .....   | 1163                 |
| Use of coercion in collection of, should not be established as a means to which superior sanctity attaches to the detriment of nations resorting to peaceful methods of settlement ..... | 1297                 |
| Where injuries received are the result of acts of a sovereign state, how prosecuted .....  | 858                  |

COERCION (*See also* Blockade; Intervention):

|   |            |
|---|------------|
| Collection of debts by means of, in South American countries tends, and will ultimately lead, to conquest .....   | 1137       |
| Fact that use of, produced admission by Venezuela of the justice of British claims does not destroy the binding effect of such admission .....  | 1255       |
| If it had been used to the ultimate, resulting in an exclusive assignment of revenues to the allies, yet no injustice to other powers could be charged .....                                | 1200       |
| If resort to, was unjustifiable, the allies should not be accorded preference; but if the Tribunal decides that it was justifiable then preferential treatment should be awarded them ..... | 1144       |
| If rights resulting from the use of, are denied, the decision of the Tribunal will be dangerous to, rather than in the interest of, peace .....   | 1200, 1249 |
| Immunity from, should not be decreed to a nation simply because of its weakness .....   | 1306       |
| Justice or injustice of use of, not subject to determination by the Tribunal, nor material to the case .....  | 1178       |
| Must be decided by the Tribunal .....   | 1150       |

## COERCION—Continued.

Page.

|  |            |
|--|------------|
| Measures of, contemplated by Great Britain, were communicated to all the creditor powers.....                              | 1215-1219  |
| Were undertaken solely for the benefit of the allies, incidental benefits being derived by the other creditor powers.....  | 1199       |
| Not resorted to by Germany until all peaceful means to secure satisfaction had been exhausted.....                         | 991        |
| Remains the ultimate remedy available to nations to secure satisfaction of grievances.....                                 | 983        |
| Resort to, not justifiable for the enforcement of contracts or the collection of debts.....                                | 1135       |
| Sanctioned by the usage of nations to compel satisfaction of diplomatic claims.....  | 765        |
| Serves the purposes of the individual nation putting into effect, but confers no advantage or rights on third parties..... | 765        |
| Use of, by the allies should be considered in relation to their obligations as signatories of The Hague Convention.....    | 1126, 1137 |
| May be necessary at times, but every attempt should be made to avoid such necessity .....                                  | 887        |
| To secure satisfaction of the claims of the allies, was justifiable under the circumstances.....                           | 1210, 1328 |

## COHEN, ARTHUR :

## Argument in behalf of Great Britain—

## Agreement—

|  |      |
|--|------|
| Made by Venezuela guaranteed adequate security to the allies; subsequent agreements with peace powers of no force or validity..... | 1261 |
| Vattel cited in support of British contention.....   | 1261 |

## Arbitration—

|   |      |
|---|------|
| Not compulsory, but absolutely voluntary, with nations signatory to The Hague Convention.....   | 1258 |
| Anglo-French arbitration treaty would have been unnecessary if arbitration were compulsory..... | 1259 |

## British claims—

|  |      |
|--|------|
| Justice of, admitted by Venezuela in the protocol.....       | 1254 |
| Blockade raised because of this admission.....               | 1254 |
| Justice of, not a question for decision of the Tribunal..... | 1255 |

## British complaints—

|   |      |
|---|------|
| Remonstrances of Great Britain in connection with, not treated seriously by Venezuela.....  | 1256 |
| <i>Ban Righ</i> case set up by Venezuela as a counterclaim and used as a pretext for delay in settlement of complaints of British subjects..... | 1256 |

## Coercion—

|   |      |
|---|------|
| Fact that use of, produced admission by Venezuela of the justice of British claims does not destroy the binding effect of such admission..... | 1255 |
|---|------|

## Contracts (international)—

|   |      |
|---|------|
| Valid although brought about by force; this, in contradistinction to private contracts..... | 1255 |
|---|------|

## Equity—

|  |      |
|--|------|
| Contention that "equality is equity" refuted; word means the same as "equality" only when parties are on equal footing ..... | 1259 |
|--|------|

## COHEN, ARTHUR—Continued.

Page.

## Argument in behalf of Great Britain—Continued.

## Equity—Continued.

As used in international law intended simply to establish the principle that in law all nations are equal..... 1260

Principle assented to, but demand for such equal rights implies equal obligations on the part of the demanding powers ..... 1260

Powers do not stand in equal positions in this case..... 1260

Story (Equity Jurisprudence) cited to sustain British contention ..... 1261

Application of the principle illustrated in American and English jurisprudence..... 1261

## Estoppel—

Admission by Venezuela, in the protocol, of the justice of British claims estops that country from now denying the truth of the admission..... 1255

Plous Fund case cited in support of application of estoppel... 1255

## International law—

Validity of international contracts brought about by force sustained by international law; Wheaton, Woolsey, and Hall cited..... 1255

*Locus standi* of peace powers before the Tribunal rests on their adherence to the protocols of May 7, 1903..... 1256

## Mixed Claims Commission—

Adjustment of claims by, agreed to by Great Britain, except those arising from imprisonment or maltreatment of British subjects ..... 1257

## Protocols—

Position of the powers at the time of signature of, to be considered in the decision of the question..... 1254

## CONDUCT OF THE ALLIES:

Course pursued by Great Britain was representative of the conduct of her allies, and was in the greatest possible contrast to that which might reasonably have been expected..... 1126, 1131-1133

## CONDUCT OF VENEZUELA:

Not contended that it was such throughout the entire controversy as to merit the commendation of the Tribunal..... 1134

Reasons for, to be found in the irritation and apprehensions growing out of the use of Trinidad Island as a base for promoting insurrections in Venezuela and for smuggling; fear of conquest, etc..... 1128-1130, 1134

## CONTRACTS, INTERNATIONAL:

Can not be declared void provided vested rights of other powers are not affected..... 978

Can not curtail the rights of powers not parties to..... 914

Limitations and effects of..... 916

Relation of the principles of international law to..... 960

Valid although brought about by force; this in contradistinction to private contracts..... 1255

## COMPLAINTS AGAINST A STATE:

When likely to lead to serious results, impartial investigations should be made of the facts, so as to determine their justice..... 1147

|  | Page.                       |
|--|-----------------------------|
| <b>CORRESPONDENCE.</b> ( <i>See British Blue Book; Appendixes to Cases and Counter Cases.</i> )  |                             |
| <b>COUNSEL:</b>  |                             |
| List of, representing the powers before the Tribunal.....  | 46                          |
| <b>CREDENTIALS OF THE VENEZUELAN PLENIPOTENTIARY:</b>  |                             |
| Text of .....  | 382                         |
| Authorized negotiations of a settlement of the claims of all the creditor nations.....   | 931-934, 1276-1278          |
| Authorized separate negotiations with the allies.....  | 1267                        |
| Authorizing negotiations solely with the allies, never communicated to them .....  | 1276                        |
| Mr. Bowen's statement with respect to.....   | 1277                        |
| Accuracy of, substantiated by the documents in the British Blue Book .....   | 1278                        |
| Properly distinguished, two sets of full powers are in evidence, the earlier set authorizing negotiations with the allies, the later set with the peace powers.....                      | 1317-1319                   |
| <b>CUSTOMS REVENUES:</b>   |                             |
| Assignment of, by Venezuela not the voluntary act of a debtor for the benefit of all creditors, as in bankruptcy proceedings.....  | 1249                        |
| In payment of claims of all the creditor powers, never acquiesced in by Germany.....   | 992                         |
| "Diplomatic debt" of Venezuela, secured by collective action of the powers in 1872.....  | 848                         |
| Estimate of those available from the ports of La Guaira and Puerto Cabello submitted to show lack of basis for the allies' claim as to their inadequacy.....                             | 1292                        |
| Never pledged exclusively to the allies.....   | 934, 1051, 1057, 1062, 1090 |
| Right of a nation to assign a portion of, as security for debts due a particular creditor power, can not be disputed.....  | 1248                        |
| <b>DEBTS.</b> ( <i>See Diplomatic debt; Claims.</i> )  |                             |
| <b>DECISION.</b> ( <i>See also Award of Tribunal</i> ):  |                             |
| Can not be predicated upon international law as applied prior to The Hague Convention .....  | 1119                        |
| Conclusions of the United States upon which its request for a favorable decision is based.....   | 1349                        |
| If favorable to the allies would be productive of violence by creditor States against debtor States and between the creditor States themselves .....                                     | 887, 1297                   |
| In deciding the question of preferential treatment, the Tribunal must pass upon the merits of the two methods of procedure in the collection of debts—the coercive and the peaceful..... | 1119                        |
| Must be determined upon principles of international law and international treaties.....  | 938, 1274                   |
| Of great importance to the United States, which believes in a peaceful solution of all such questions.....   | 1121, 1134, 1167            |
| <b>DIPLOMATIC CORRESPONDENCE.</b> ( <i>See British Blue Book; Appendixes to Cases and Counter Cases.</i> )   |                             |
| <b>"DIPLOMATIC DEBT" OF VENEZUELA:</b>   |                             |
| Security for, obtained by collective action of the powers against Venezuela in 1872.....   | 848                         |



|  |                  |
|--|------------------|
| <b>DIPLOMATIC SETTLEMENT:</b>  | <b>Page.</b>     |
| Collection of claims may be as effectively done by diplomatic as by military procedure .....   | 1297             |
| Great Britain exhausted every diplomatic resource before resorting to measures of force.....   | 1304, 1336       |
| The United States has always been able to obtain satisfaction of her claims by means of.....   | 433              |
| <b>DOCUMENTS:</b>  |                  |
| List of, submitted to the Tribunal.....  | 114              |
| <b>EQUALITY OF STATES:</b>   |                  |
| Principle of, not denied nor is it material to the present case, as no rights of other powers have been curtailed by the acts of the allies .....                            | 1190             |
| Guided Venezuela during the negotiations with the allies on the question of settlement of their claims.....  | 1132             |
| Discussed in the United States case.....   | 430              |
| <b>EQUALITY OF TREATMENT:</b>  |                  |
| Analogies in private law do not support claim of peace powers for....  | 983              |
| Always insisted upon by Venezuela.....   | 1058             |
| At variance with international practice and equity.....  | 753              |
| Chinese Boxer indemnity cited as a precedent in support of.....  | 430, 867         |
| Common law upholds.....  | 880              |
| Justice may be demanded by a State for its nationals domiciled in another State, but not to the exclusion of the same right to nationals of another State.....               | 430              |
| Natural and consistent principle for Venezuela to have upheld.....   | 878              |
| No proposition for, had ever been put forward by Venezuela.....  | 1237             |
| Peace powers made no claim to, until results of blockade were manifest .....   | 1265             |
| Precedents in support of.....  | 430, 449-452     |
| Principle of the equality of States applied to.....  | 150, 430, 1175   |
| Promised to all creditor powers by Venezuelan plenipotentiary.....   | 931              |
| Proposition that all nations are entitled to, is true, but subject to limitations according to circumstances.....  | 975              |
| Protocol of February 13, 1903, can not be so construed as to prove consent by Germany to.....  | 1183, 1187       |
| Recognition of the principle of, necessary to the peace and commercial progress of the world.....  | 431              |
| Relative situation of the allies and the creditor powers precludes..   | 980, 981         |
| Right of peace powers to, can not be established on any legal basis..  | 765              |
| Services of the United States in settling dispute do not establish any legal right to.....   | 1001             |
| Venezuela guided by the principle of, in her negotiations with the Allies .....  | 162              |
| <b>EQUITY:</b>   |                  |
| Application of the principle of, illustrated in American and English jurisprudence .....   | 1261             |
| As used in international law, intended simply to establish the principle that in law all nations are equal.....  | 1259             |
| Can not be construed as meaning the same as "equality" where there are differences in the circumstances of the cases....   | 1204, 1259, 1260 |
| Can not be invoked in support of the peace powers on the ground that they have suffered injury due to the action of the allies, the allegation of injury not being true..... | 1198             |

**EQUITY—Continued.**

Page.

|  |            |
|--|------------|
| Claims of the blockading powers founded upon.....  | 817        |
| Discussion of the principle of, as applied by the allies to the question of prior payment.....                             | 1108       |
| Preferential treatment in this case would be contrary to principles of .....   | 886, 890   |
| Principle assented to, but demand for such equal rights implies equal obligations on the part of the demanding powers..... | 1260       |
| Proposition that "equality is equity" can not be accepted by Germany as applicable to the present case.....                | 1182, 1183 |
| Rules of, arising out of the facts must be applied by the Tribunal....   | 1200       |
| Story (Equity Jurisprudence) cited to sustain British contention....   | 1261       |

**ESTOPPEL:**

|  |      |
|--|------|
| Admission by Venezuela in the protocol of the justice of British claims estops her from now denying the truth of the admission....   | 1255 |
| Plous Fund case cited in support of application of.....  | 1255 |
| The allies, having accepted Mr. Bowen's credentials authorizing him to settle claims of all creditor nations, are precluded from disputing the legitimacy of the negotiations..... | 1279 |

**EVIDENCE:**

|  |      |
|--|------|
| Official publications relied upon as to the facts presented to the Tribunal for its consideration..... | 1118 |
|--|------|

**FINLAY, SIR ROBERT:****Argument in behalf of Great Britain—****Acquiescence—**

|  |                                  |
|--|----------------------------------|
| Peace powers were informed that blockade was to be instituted, and they entered no protests..... | 1210, 1215-1219, 1239, 1329-1333 |
| Of Venezuela in the conditions laid down by Great Britain and Germany.....                       | 1230                             |

**Arbitration—**

|  |            |
|--|------------|
| Not proposed by Venezuela until after commencement of hostilities .....  | 1220       |
| Conditions upon which Great Britain acquiesced in proposal for .....   | 1221, 1225 |
| Policy of, will be harmed, not benefited, by attempts to ignore the legitimate consequences of war.....  | 1239       |
| Question was referred to the Tribunal because the allies desired to end warlike measures, not through fear of interference by other creditor powers..... | 1251       |
| Was availed of by Great Britain as soon as the opportunity was presented.....  | 1303, 1306 |
| Not only not proposed by Venezuela prior to the blockade, but was refused by her when proposed by Germany.....   | 1305       |

**Bankruptcy—**

|   |      |
|---|------|
| Application of the principles of, to the case of Venezuela denied: a nation can not be deemed a bankrupt under international law..... | 1248 |
|---|------|

**Ban Righ case—**

|  |            |
|--|------------|
| Discussion of, in refutation of the argument of Mr. MacVeagh .....                 | 1206-1210  |
| Action of British Government in relation to, in accord with international law..... | 1210, 1304 |

|   |                  |
|---|------------------|
| <b>FINLAY, SIR ROBERT—Continued.</b>  | <b>Page.</b>     |
| Argument in behalf of Great Britain—Continued.  |                  |
| <i>Ban Righ</i> case—Continued.   |                  |
| Used by Venezuela as a pretext for refusing to discuss British complaints.....  | 1304             |
| Blockade—   |                  |
| Grounds of its justification set forth.....   | 1247             |
| Justice or injustice of, not a question for determination by the Tribunal .....   | 1245, 1247, 1329 |
| Consideration on which it was raised was the promise of Venezuela of adequate security for the payment of the claims of the allies.....                             | 1319, 1322       |
| British complaints against Venezuela, statement of.....   | 1211–1214        |
| British-Venezuelan boundary dispute, reply to Mr. MacVeagh's remarks upon.....  | 1205             |
| Chinese Indemnity precedent discussed.....  | 1200             |
| Fundamental differences from the Venezuelan case pointed out and its applicability denied.....  | 1200–1202        |
| Claims—   |                  |
| Proposal for direct settlement of, instead of by arbitration, correspondence relating to, discussed.....  | 1223–1229        |
| Settlement of, by peaceful means always desired by Great Britain .....  | 1303             |
| Negotiations for settlement of those of the allies discussed..  | 1319–1321        |
| Coercion—   |                  |
| Measures of, were undertaken solely for the benefit of the allies, incidental benefits being derived by the other creditor nations.....                             | 1199             |
| If used to the ultimate, resulting in an exclusive assignment of revenues to the allies, yet no injustice to other powers could have been charged.....              | 1200             |
| Use of, to secure satisfaction of the claims of the allies, was justifiable under the circumstances.....  | 1210, 1328       |
| Measures of, contemplated by Great Britain were previously communicated to all the creditor powers.....   | 1215–1219        |
| If rights resulting from the use of, are denied, the decision of the Tribunal will be dangerous to, rather than in the interests of, peace.....                     | 1200, 1249       |
| Credentials of the Venezuelan plenipotentiary—  |                  |
| Properly distinguished, two sets of full powers are in evidence, the earlier set authorizing negotiations with the allies, the later set with the peace powers..... | 1317–1319        |
| Customs revenues—   |                  |
| Right of a nation to assign a portion of, as security for debts owing to a particular creditor power can not be disputed...   | 1248             |
| Assignment of, by Venezuela not the voluntary act of a debtor for the benefit of all creditors, as in bankruptcy proceedings .....                                  | 1249             |
| Diplomatic settlement—  |                  |
| Great Britain exhausted every diplomatic resource before resorting to measures of force.....  | 1304, 1336       |
| Equality of treatment—  |                  |
| No proposition for, had ever been put forward by Venezuela..  | 1237             |

**FINLAY, SIR ROBERT—Continued.****Page.****Argument in behalf of Great Britain—Continued.****Equality of treatment—Continued.**

Should not be granted to the peace powers, as they took no part in securing the settlement..... 1333-1335

**Equity—**

Can not be construed as meaning the same as "equality" where there are differences in the circumstances of cases. 1204

Rules of, arising out of the facts must be applied by the Tribunal ..... 1200

**Immunity of Venezuela from punishment—**

Should not be accorded simply because she is a weak State ..... 1199, 1306

Course of Venezuela shows that she considered herself free from the restraints of international law..... 1304

**International law—**

Task of imposing respect for, devolved, under the circumstances, upon the allies..... 1199

A belligerent entitled to the results gained by war a fundamental proposition of..... 1203

Contention refuted that principles of, as they existed prior to the Hague Conference, are not now applicable..... 1243

Recognizes the right of a State to enter upon war and likewise recognizes the results of war—Rivier and Hall cited. 1246

No doctrine of, which prevents a State from disposing of its resources as it may see fit..... 1251

**Obligations under—**

Apply equally to weak nations as to the strong..... 1199

Belief in immunity from, a menace to the peace of the world ..... 1199

**Outrages committed against British subjects—**

No attempts made by counsel for Venezuela to justify..... 1303

**Precedents—**

Chinese Indemnity and the Haitian "light dues" not considered analogous to the case of Venezuela..... 1335

**Preferential treatment—**

Should be granted to the allies, not as an award of merit, but as a matter of right and equity..... 1199, 1253

Right to, not impaired by the fact that securities were realized as a result of coercion..... 1203

Objections of Mr. Bowen to, commented upon..... 1236

Right to, always insisted upon by the allies, but mode of determining that right was changed..... 1237, 1309, 1323

Will not interfere with vested rights of other powers... 1239, 1248

Implied by the fact that customs houses were proposed by Venezuela as a guaranty of the payment of the claims of the allies..... 1248

Right of interference of other powers to annul assignment of revenues to the allies denied..... 1250

Protocols and attending circumstances do not establish contention of the peace powers that allies abandoned claim for ..... 1307

## FINLAY, SIR ROBERT—Continued.

Page.

## Argument in behalf of Great Britain—Continued.

## Preferential treatment—Continued.

Should be accorded allies because of Venezuela's pledge of adequate security, and this security will not be adequate if it is to be applied to all nations..... 1325-1327

## Protocols—

Meaning of words "separate treatment," protocol of February 13, identical with "separate or preferential treatment," in protocol of May 7, 1903..... 1307

Must be interpreted in connection with the negotiations, to show the acquiescence of Venezuela in the demand for adequate security and, by implication, preferential treatment. 1310

## Queen, case of—

Specially considered as an example of arbitrary action by Venezuelan authorities in seizing the property of British subjects ..... 1211

No justification can be found for destruction of..... 1214

## Security—

Acquired as a result of the use of coercion is unimpeachable. 1200

Derived by the allies by means of blockade, should not be shared by nations taking no part in obtaining it..... 1204

Adequacy of, always insisted upon by Great Britain in lieu of immediate payment..... 1210

No assent given by Great Britain to the proposition that the claims of all creditor powers should be satisfied from the revenues assigned..... 1211

Could only be considered adequate if it provided for payment of claims of the allies within a reasonable time.. 1222-1224, 1326

Acceptance of the terms laid down by Great Britain and Germany implied the giving by Venezuela of adequate security ..... 1226-1227

Assignment of, was obtained solely by means of the blockade, at no expense to the peace powers and with their acquiescence ..... 1239, 1327

Could not have been obtained without the use of coercion... 1240

Stability of, dependent upon the stability of Venezuelan institutions, and its value is more or less a matter of speculation ..... 1326

## Ultimatum—

Correspondence examined showing protests made by Great Britain against acts of Venezuela, finally leading to presentation of..... 1214-1219

Demanded immediate settlement of matters of honor, but agreed to a mixed commission to consider other claims.... 1305

## Vested rights—

French and Belgian special securities not prejudiced by the assignment of revenues to the allies..... 1248-1249

## FRENCH CASE:

Introductory statement..... 875

Anglo-Venezuelan protocol analyzed ..... 875

Blockading powers and peace powers, their respective situations considered ..... 877

| FRENCH CASE—Continued.   | Page. |
|--|-------|
| Equality of treatment—   |       |
| Negotiations of Venezuelan plenipotentiary intended to provide for .....   | 878   |
| Would have been natural and consistent attitude for Venezuela to assume .....  | 878   |
| Sustained by principles of common law .....  | 880   |
| Customs revenues, priority of possession of by allied powers not sustained by the facts .....                                    | 879   |
| Precedents and written law, absence of, necessitates application of the general principles of jurisprudence .....                | 880   |
| Decision of Tribunal to be determined by juridical means .....   | 881   |
| Coercion—  |       |
| Theory of its use to secure preference discussed .....   | 881   |
| Expenses incurred in use of, no provision for reimbursement contained in the protocols .....                                     | 883   |
| Preferential treatment—  |       |
| Securing of, by the allies in payment of "first-rank" claims, implied settlement of other claims according to ordinary law ..... | 884   |
| Important effects of decision in favor of .....  | 886   |
| Chinese Boxer Indemnity cited as a precedent in support of equality of treatment .....   | 888   |
| Summary .....  | 890   |
| FRENCH COUNTER CASE:   |       |
| French case reaffirmed .....   | 1057  |
| Revenues of La Guaira and Puerto Cabello—  |       |
| Never possessed exclusively by allies as claimed .....   | 1057  |
| No formal agreement made with respect to special or general assignment of .....  | 1058  |
| Equality of treatment always insisted upon by Venezuela .....  | 1058  |
| Protocols, placed all nations on equal footing as respects payment of their claims .....   | 1058  |
| Priority of payment—   |       |
| Not determined by order of signature of protocols .....  | 1059  |
| Pledge for, had not been secured when allies raised blockade .....   | 1061  |
| Juridical reasons only to be considered by the Tribunal in rendering decision as to .....  | 1060  |
| Not determined, as contended by allies, by circumstances existing at time protocols were signed .....                            | 1063  |
| Not to be granted to allies on account of expenses incurred by blockade .....  | 1064  |
| Answer to British contention that peace powers had no right to interfere .....   | 1060  |
| Adequate security, promise of, by Venezuela, did not imply exclusive possession of by allies .....                               | 1062  |
| Preferences already gained by allies, statement of .....   | 1064  |
| Analogies in private law set up by Great Britain, examined .....   | 1065  |
| FRENCH COUNTER CASE APPENDIX:  |       |
| List of French claims .....  | 1070  |
| Indemnities awarded by mixed claims commissions .....  | 1071  |
| FRENCH CLAIMS:   |       |
| Character and status of .....  | 990   |



| FRENCH CLAIMS—Continued.   | Page.    |
|--|----------|
| List of .....  | 1070     |
| Reservations made by France on behalf of .....   | 662, 785 |
| GERMAN CASE:   |          |
| Ultimatum, causes leading to presentation of .....   | 811      |
| Negotiations for settlement of dispute reviewed .....  | 811      |
| Protocol, interpretation of terms of .....   | 811-812  |
| Equality of treatment of creditor nations, contention of Venezuela in support of, examined .....                   | 812      |
| Preferential treatment—  |          |
| Legal bases in support of—   |          |
| Negotiations prior to the protocol of February 13, 1903 .....  | 812-813  |
| The blockade for enforcement of payment of claims .....  | 815      |
| Natural obligation of Venezuela to pay expenses incurred by blockading powers .....                                | 815      |
| As a matter of equity, allies are entitled to .....  | 816      |
| GERMAN CASE APPENDIX:  |          |
| Mr. von Pilgrim-Baltazzi to Doctor Baralt, December 7, 1902 .....  | 818      |
| Correspondence between German Foreign Office and American Embassy relating to Venezuelan proposal for arbitration— |          |
| Mr. Tower to Foreign Office, December 13, 1902 .....   | 837      |
| Foreign Office to Mr. Tower, December 23, 1902 .....   | 844      |
| Mr. Tower to Baron Richthofen, January 1, 1903 .....   | 839      |
| Foreign Office to Mr. Tower, January 6, 1903 .....   | 846      |
| Mr. Tower to Baron Richthofen, January 9, 1903 .....   | 841      |
| Protocols between Germany and Venezuela—   |          |
| Providing for settlement of claims, February 13, 1903 (German text, 833) .....                                     | 831      |
| Providing for reference of the question of preferential treatment (German text, 841) .....                         | 835      |
| GERMAN COUNTER CASE:   |          |
| Reply to Venezuelan Case—  |          |
| Action of allies in using coercion—  |          |
| Not subject to investigation by the Tribunal .....   | 989      |
| Justified by refusal of Venezuela to settle claims .....   | 989, 991 |
| Claims—  |          |
| Venezuela's contention for settlement of, in her courts, a cause for resort to force .....                         | 990      |
| Security pledged for payment of those of a diplomatic character inadequate if all nations are to benefit .....     | 991      |
| Contention that justice of, was determined <i>ex parte</i> , answered .....  | 994      |
| Customs revenues, assignment of, in favor of all the powers, not acquiesced in by Germany .....                    | 992      |
| Chinese Indemnity precedent discussed .....  | 993      |
| Other contentions answered .....   | 994, 995 |
| Reply to Belgian case—   |          |
| Considerations adduced in reply to Venezuelan case applicable to that of Belgium .....                             | 995      |
| Caracas General Water Supply Company case specially examined and discussed .....                                   | 995      |
| Reply to French case—  |          |
| Customs revenues, not assigned by Venezuela conjointly to all the powers .....                                     | 996      |

## GERMAN COUNTER CASE—Continued.

Page.

## Reply to French case—Continued.

Preferential treatment, prior date of protocols with the allies  
established their right to..... 997-998

French claims, character and status of, discussed..... 999

Reply to Netherlands case..... 1000

Reply to Swedish-Norwegian case..... 1000

Reply to Spanish case..... 1000

## Reply to United States case—

Equality of treatment, services of the United States in settling  
dispute does not establish right to..... 1001

Precedents, of Chinese, Turkish, and Egyptian indemnities, not  
pertinent to case of Venezuela..... 1001

Injuries occasioned to the United States by the blockade counter-  
balanced by benefits derived..... 1001-1002

Adequacy of Venezuela's guaranty, contention of the United  
States that it is sufficient to settle all proper claims, disputed. 1002

## GERMAN CLAIMS:

Discussed in United States case..... 435, 437

List of..... 266-271

Great Railway of Venezuela case..... 252, 275

Diplomatic correspondence relating to..... 265-289

GREAT RAILWAY OF VENEZUELA, case of..... 252, 275

GUARANTY, ADEQUACY OF. (See Security.)

## HAGUE TRIBUNAL:

Award of, its force and value as a precedent..... 14

Can make no decisions respecting the foundation of claims..... 866

Can determine disputed questions of law and fact, but can not enforce  
its awards..... 983

Decision of, to be determined by juridical means only..... 877, 1060

Is dependent upon character of the Tribunal..... 150

Effect of, if adverse to the peace powers..... 887, 925

Issues before the Tribunal..... 13, 1274

Its creation and aims discussed..... 150

List of agents and counsel before..... 43, 46

## Orders of the Tribunal—

Appointing officers of..... 46

As to the language to be used..... 53

As to procedure, etc..... 62, 67, 71

Procedure of..... 17

Protocols of proceedings of..... 43-105

Suggestions by agent of the United States as to future arbitrations  
before..... 20

"HARRY TROOP," case of..... 727

## HYPOTHECATION FOR THE BENEFIT OF A CREDITOR:

Applied, by analogy, to the case of Venezuela, sustains the claim for  
preferential treatment..... 1196

## IMMUNITY OF VENEZUELA FROM PUNISHMENT:

Course of Venezuela shows that she considered herself free from the  
restraints of international law..... 1304

Should not be accorded simply because she is a weak state..... 1199

## INDEMNITIES:

Chinese Boxer, cited as a precedent in support of contention of the  
peace powers for equal treatment..... 150, 888, 919

Discussion of..... 979, 993, 1030

## INDEMNITIES—Continued.

Page,

|   |                             |
|---|-----------------------------|
| Collection of, in Turkey, Egypt, and China cited as precedents.....                           | 430                         |
| List of, awarded by Franco-Venezuelan Commission.....   | 1071                        |
| List of, awarded by United States and Venezuelan Commissions of<br>1889 and 1894.....         | 429, 432, 454               |
| Payment of, to satisfy "first rank" claims of allies, really preferen-<br>tial treatment..... | 884                         |
| To cover expenses of blockade, allies not entitled to.....                                    | 866, 1064, 1092             |
| No provision in protocols for.....  | 883                         |
| "INDIANA," case of.....   | 199, 526-530, 543, 597, 775 |

## INSURRECTIONS IN VENEZUELA:

|  |      |
|--|------|
| No allowance made by Great Britain for the fact that Venezuela was<br>using all her strength and resources in suppression of.....          | 1131 |
| Promotion of, from Trinidad Island, and the indifferent attitude of the<br>governor of the island, a cause of irritation of Venezuela..... | 1147 |

INTERNATIONAL LAW. (*See also* Citations):

|   |                |
|---|----------------|
| Action of the allies in blockading Venezuelan ports, in accordance<br>with the principles of.....                               | 1019           |
| Agreements (international) can not curtail rights of third parties..  | 914, 916       |
| Belligerents entitled to the results gained by war, a fundamental<br>proposition of.....  | 1203           |
| Blockading powers entitled to require Venezuela to pay expenses<br>incurred, in accordance with principles of.....              | 815            |
| Civil law the natural and necessary complement of.....  | 918            |
| Coercion, can the use of, under international law, constitute a <i>justa</i><br><i>causa</i> of preference?.....                | 881            |
| Contention refuted that principles of, as they existed prior to the<br>Hague Conference, are not now applicable.....            | 1243           |
| Does not recognize bankruptcy in a nation.....  | 976, 1037      |
| Equal rights of all nations, proposition true, but subject to limitations<br>according to circumstances.....                    | 975            |
| Hall cited in support of right of nations to use force in securing<br>redress .....   | 984            |
| Influence of the Hague Court upon.....  | 187            |
| Jurisdiction of a state over resident foreigners.....   | 858            |
| No doctrine of, which prevents a state from disposing of its resources<br>as it may see fit.....                                | 1251           |
| Obligations under—  |                |
| Apply equally to weak nations as to the strong.....   | 1199           |
| Belief in immunity from, a menace to the peace of the world.....  | 1190           |
| Pacific blockade as defined by.....   | 157            |
| Preferential payment demanded by the allies, contrary to....  | 430, 867, 1107 |
| Principles framed by The Hague Court to become indispensable<br>parts of .....  | 170            |
| Principles of, as existing before The Hague Conference, not applicable<br>now as then.....                                      | 181            |
| In relation to international contracts discussed.....   | 860            |
| Recognizes the right of a state to enter upon war, and likewise recog-<br>nizes the results of war (Rivier and Hall cited)..... | 1246           |
| Rights of neutral nations are preserved in their entirety during a<br>state of war.....   | 917            |
| Sovereign states in theory equal, but political considerations some-<br>times cause the theory to be disregarded.....           | 880            |

|  |                                       |
|--|---------------------------------------|
| <b>INTERNATIONAL LAW—Continued.</b>  | <b>Page.</b>                          |
| Task of imposing respect for, devolved under the circumstances upon the allies.....  | 1199                                  |
| Validity of international contracts brought about by force sustained by international law (Wheaton, Woolsey, and Hall cited).....  | 1255                                  |
| <b>INTERVENTION. (See also Coercion; Blockade):</b>  |                                       |
| Form of, dependent upon the circumstances of the particular case....   | 1181                                  |
| In behalf of doubtful claims against weak states, discussed.....   | 160                                   |
| Of the peace powers—   |                                       |
| Was an act of policy which the Tribunal can not consider.....  | 1294                                  |
| Was effective in the interests of an amicable settlement of the claims by means of arbitration.....  | 1296                                  |
| Was a legitimate use of diplomacy for the purpose of protecting the interests of their citizens, a right and duty indisputable....   | 1339                                  |
| Of the various Governments, character and significance of, discussed..   | 1295                                  |
| Opposition of Venezuela to, shown by extracts from correspondence..  | 990                                   |
| Right of, to protect the lives, property, and liberty of citizens domiciled in foreign countries a national duty which can not be denied..   | 1181                                  |
| The allies are interveners inasmuch as they step in and seek to deprive the peace powers of their share in an assignment made by Venezuela for the benefit of all the creditor powers..... | 1295                                  |
| Views as to the character of cases in which it is justifiable.....   | 1131, 1136                            |
| "IN TIME," case of.....  | 200, 582-584, 605, 614, 621, 628, 776 |
| <b>ISSUES BETWEEN THE PEACE POWERS AND THE ALLIES:</b>   |                                       |
| Statement of the questions which were involved.....  | 1274                                  |
| <b>ITALIAN CASE:</b>   |                                       |
| Statement of facts—  |                                       |
| Security of Italian residents assured by treaty of 1861 with Venezuela .....   | 848                                   |
| Injuries of Italian subjects not compensated.....  | 848                                   |
| "Diplomatic debt," security of, assured by collective action of powers in 1872.....  | 848                                   |
| Claims—validity, amount, and classes of.....   | 848, 855                              |
| Blockade, causes of institution of.....  | 859                                   |
| Argument—  |                                       |
| Blockade, legal aspect of, as a means of enforcing demands.....  | 857                                   |
| Bankruptcy, consideration of the principle as affecting Venezuela..  | 857                                   |
| Injuries, procedure in cases of, growing out of the exercise of sovereignty .....  | 858                                   |
| Responsibility of Venezuela considered.....  | 858                                   |
| Protocols, interpretation of.....  | 860                                   |
| Preferential treatment, bases of.....  | 862, 863                              |
| <b>ITALIAN COUNTER CASE:</b>   |                                       |
| Introductory statement .....   | 1017                                  |
| Arbitration—   |                                       |
| Italian treaties always provided for.....  | 1017                                  |
| Refused by Venezuela when offered by Great Britain and Italy....   | 1018                                  |
| When disputes can not be adjusted by, acts of war are reasonable .....   | 1021                                  |
| Monroe doctrine, President Roosevelt's message defining attitude of the United States toward American States that misconduct themselves .....  | 1019                                  |
| Action of allies in accord with the principles of international law....  | 1019                                  |

|  |                      |
|--|----------------------|
| <b>ITALIAN COUNTER CASE—Continued.</b>   | <b>Page.</b>         |
| Coercive action not preferred by allies, but was necessary-----  | 1020                 |
| Claims—  |                      |
| Refusal of Venezuela to settle, a sufficient reason under the law<br>of nations for coercive action to secure redress-----                 | 1020                 |
| Nature of those of Italy-----  | 1021                 |
| Of other powers, not of same character as Italian-----   | 1021                 |
| Indemnities, other agreements made by Italy with respect to-----   | 1020                 |
| Answer to contention of peace powers against the use of coercion to<br>secure redress of grievances-----                                   | 1022                 |
| Preferential treatment, negotiations with respect to, examined-----  | 1025                 |
| Allied powers entitled to, as a result of blockade-----  | 1042                 |
| Equality and sovereign rights of States discussed-----   | 1028                 |
| Chinese Boxer Indemnity, citation of, as a precedent, thoroughly dis-<br>cussed -----  | 1029                 |
| Protocols between Venezuela and the peace powers, validity of, ques-<br>tioned -----   | 1033                 |
| Belgian claims (Caracas Water Supply Company) examined-----  | 1037                 |
| Bankruptcy, principles of private law relating to, not applicable to a<br>State -----  | 1038                 |
| French claims, securities for, obtained in 1885, not prejudiced by the<br>protocols of Venezuela with the blockading powers-----           | 1040                 |
| <b>ITALIAN CLAIMS:</b>   |                      |
| Classes and amount of-----   | 437, 848, 855        |
| Diplomatic correspondence relating to-----   | 312-319              |
| <b>JAPAN:</b>  |                      |
| Protest of, against remarks of the President of the Tribunal concern-<br>ing the war with Russia-----                                      | 139                  |
| <b>KELLY, JAMES N., case of-----</b>   | <b>192, 466, 659</b> |
| <b>LANGUAGE:</b>   |                      |
| To be used before the Tribunal, decision as to-----  | 53                   |
| <b>LETTERS. (See British Blue Book; Appendixes to Cases and Counter<br/>    Cases.)</b>  |                      |
| <b>MACVEAGH, WAYNE. (See also Venezuelan Case):</b>  |                      |
| Argument in behalf of the United States and Venezuela—   |                      |
| Arbitration—   |                      |
| No proposition for, was ever made by Great Britain---  | 1131-1132            |
| Proposed by Germany in 1901, but proposal was not renewed<br>at any later period when Venezuela was in a condition to<br>accept -----      | 1132                 |
| Collective pressure and insistence would have produced ac-<br>ceptance by Venezuela-----   | 1132                 |
| Collective action of the powers in 1902 against Guatemala<br>cited as an example of the effectiveness of diplomatic pres-<br>sure -----    | 1132                 |
| Venezuela should have requested arbitration of the claims of<br>the allies, as she did in the boundary dispute with Great<br>Britain ----- | 1133                 |
| Causes operating to deter Venezuela from proposing----   | 1133-1134            |
| Should have been insistently urged by the allies, in view of<br>the minor importance of their claims, rather than resort<br>to war -----   | 1155                 |

MACVEAGH, WAYNE—Continued.

Page.

Argument in behalf of the United States and Venezuela—Continued.

*Ban Righ* case—Conduct of Great Britain in relation to..... 1155-1160,  
1164-1166, 1168, 1170Cases of the *Alabama* and the *Caroline* cited as analogous.. 1156-  
1157, 1159, 1164

Trifling character of British complaints as compared with the.. 1160

Venezuela entitled to the judgment of the Tribunal as to the  
character of the depredations of the *Ban Righ* against her.. 1168

Bonded indebtedness—

Method of its creation through the corruption of officials in  
South American countries..... 1135

Bonds—

No precedent for extortion by force from another government  
of reimbursement for losses occasioned to investors in.. 1161-1162

Blockade—

Whether to be considered as constituting a state of war, not  
material to the case..... 1126Pacific, must not extend to interference with the rights of  
neutral nations..... 1126

Claims (pecuniary)—

Procedure of nations in relation to, should be modified to  
meet the spirit of the Hague Conference..... 1138In view of evil repute of, should be submitted to arbitration  
to determine their justice..... 1138

Experience of the United States with respect to..... 1138

Peremptory demand for payment of, was made by the allies  
without impartial examination into their justice..... 1140Should be brought before The Hague Tribunal for settle-  
ment ..... 1163

British claims specially discussed..... 1141-1148, 1151-1155

German claims, statement and conduct of Germany in  
respect to their collection ..... 1166-1167

Coercion—

Use of, by the allies should be considered in relation to their  
obligations under The Hague Convention of which they  
are signatories..... 1126Resort to, not justifiable for the enforcement of contracts or  
the collection of debts..... 1135-1136Collection of debts by means of, in South American countries  
tends, and will ultimately lead, to conquest..... 1137Situation with respect to the use of, changed since the  
powers became signatories of The Hague Convention.. 1137-1138Justice or injustice of its use must be decided by the  
Tribunal ..... 1150If resort to, was unjustifiable, the allies should not be ac-  
corded preference; but if the Tribunal decides that it was  
justifiable, then preferential treatment should be awarded  
them ..... 1144

Complaints against a State—

When likely to lead to serious results, impartial investiga-  
tions should be made of the facts, so as to determine their  
justice ..... 1147



## MACVEAGH, WAYNE—Continued.

Page.

Argument in behalf of the United States and Venezuela—Continued.

Conditions in Venezuela as compared with other countries should  
have caused forbearance on the part of the allies----- 1151

Conduct of the allies—

Course pursued by Great Britain representative of the con-  
duct of her allies, and was in the greatest possible con-  
trast to that which might reasonably have been expected. 1126-  
1127, 1131-1133

Conduct of Venezuela—

Not contended that it was such throughout the entire contro-  
versy as to receive the commendation of the Tribunal---- 1134

Reasons for, to be found in irritation and apprehensions  
growing out of the use of Trinidad Island as a base for  
promoting insurrections in Venezuela and for smuggling,  
fear of conquest, etc----- 1128-1130, 1134

Conquest of South American countries—

Apprehension of, by nations intervening with force to collect  
debts due their citizens, exists throughout those countries;  
Mr. Drago's note to Secretary Hay cited----- 1137

Decision of the Tribunal—

In its decision of the question of preferential treatment, the  
Tribunal must pass upon the merits of the two methods  
of procedure in the collection of debts, the coercive and  
the peaceful----- 1119

Can not be predicated upon international law as applied  
prior to The Hague Convention----- 1119

Of great importance to the United States, which believes in  
a peaceful solution of all such questions----- 1121, 1134, 1167

Equality of states—

Principle of, guided Venezuela during the negotiations with  
the allies on the question of the preferential payment of  
their claims----- 1132

All states, both the weak and the strong, should have the  
principle of equality of treatment applied to and enforced  
against them----- 1136

Evidence—

Official publications relied upon as to the facts presented to  
the Tribunal for its consideration----- 1118

Inequality of strength between Great Britain and Venezuela—

In view of, what should have been the conduct of the former  
in the settlement of its disputes with the latter----- 1130

Insurrections in Venezuela—

No allowance made by Great Britain for the fact that Vene-  
zuela was using all her strength and resources in the sup-  
pression of----- 1131

Promotion of, from Trinidad Island, and the indifferent atti-  
tude of the governor of the island, the cause of irritation  
of Venezuela----- 1147

Intervention in South American States—

Views as to the character of cases in which it is justifi-  
able ----- 1131, 1136

**MACVEAGH, WAYNE—Continued.**

Page.

**Argument in behalf of the United States and Venezuela—Continued.****Mixed Claims Commissions—**

Should be organized for the settlement of claims originating  
in South American States..... 1131

Comparison of awards rendered by the Commissions with  
the amounts originally demanded..... 1138-1139

**Monroe Doctrine—**

Not a part of international law, but must be taken into  
account by practical statesmen..... 1163, 1172

**Precedents—**

Chinese Indemnity, not different in principle from the case  
of Venezuela; in fact the nations now before the Tribunal  
shared in and recognized in that case the equal rights of  
all powers ..... 1120

**Preferential treatment—**

Can be demanded by the allies only as a reward of merit.... 1120

Allies entitled to, if the Tribunal can find justification for  
their conduct in resorting to force to collect their claims.. 1144

Recapitulation of the objections of the United States to the  
granting of..... 1174-1177

Reclamations in behalf of citizens long domiciled in a foreign  
country; question discussed in re case of Kelly, British subject. 1142

"MARIA TERESA," case of..... 194, 437-479, 492-501, 521-525

MEXICAN CASE. (Same as United States Case.)

MEXICAN COUNTER CASE. (Same as Venezuelan Counter Case.)

**MIXED CLAIMS COMMISSIONS:**

Adjustment of claims by, agreed to by Great Britain, except those  
arising from imprisonment or maltreatment of British subjects.... 1257

Awards made by, their relation to amounts demanded..... 182, 418, 1138

List of awards of the Franco-Venezuelan Commission..... 1071

Number, amount of, and percentage allowed of claims of the United  
States before five Commissions..... 418

Protocols providing for..... 23, 25, 28, 38

Should be organized for the settlement of claims originating in South  
American States..... 1131

**MONROE DOCTRINE:**

Not a part of international law, but must be taken into account by  
practical statesmen..... 1163, 1172

President Roosevelt's message to Congress defining attitude of United  
States toward American States that misconduct themselves.... 173, 1019

**MOST-FAVORED-NATION TREATMENT:**

Demanded by the United States, Spain, and Belgium..... 1276

Right of Venezuela to grant, admitted by the allies, but the form of  
it in the assignment disputed..... 1295

**NEGOTIATIONS:**

For concerted action against Venezuela—correspondence between  
Great Britain, Germany, and Italy.... 630, 637, 640, 649, 656, 663, 780, 782

Of protocols with Venezuela, correspondence..... 372-400, 406

**NEGOTIORUM GESTIO:**

If principles of, are to be applied to the action of the allies, the obli-  
gation rests upon the other powers to refund part of the expenses  
incurred by the former..... 1198

## NETHERLANDS CASE:

Petition and brief ..... 913

## NETHERLANDS COUNTER CASE:

Privileged treatment claimed by blockading powers not recognized  
by international law ..... 1107

Chinese Boxer Indemnity precedent not disproved by the allies ..... 1107

"Equity," decision in accordance with, as defined by the blockading  
powers, would be unjust ..... 1109

Analogies in civil law discussed ..... 1110

Claims of Netherlands, Sweden and Norway, character of ..... 1111

Answer to British contention that peace powers took no steps to en-  
force their claims against Venezuela ..... 1112

## NETHERLANDS CLAIMS:

Character and status of ..... 1111

PAQUET, M., case of ..... 867

"PASTOR," case of ..... 197, 504, 512, 775

PENFIELD, WILLIAM L. (*See also* Report of. as Agent of the United  
States; United States Case; Venezuelan Case):

Argument in behalf of the United States and Venezuela—

Acquiescence—

Of peace powers in acts of the allies, not admitted except  
with qualifications ..... 1293

Of a neutral government in a matter not already governed  
by international law, can not be construed as occasioning  
any loss or waiver of right, unless the government pro-  
posing to take the adverse action so informs the neutral  
government ..... 1294

Can not be claimed because the United States acted as the  
medium of communication between Venezuela and the  
allies ..... 1294

Of the United States, can not be construed as sustaining the  
claim for preferential treatment, as no notice was ever  
given that such a claim would be made ..... 1293, 1347

Assignment—

Was well understood to have been made by Venezuela to all  
the creditor nations, proven by the correspondence and  
was so interpreted by the allies themselves ..... 1281, 1284

Is in absolute accord with the terms of the German protocol ..... 1285

Benefits alleged to have been derived by the peace powers—

Contention of the allies that the peace powers are attempt-  
ing to reap benefits from the action of the allies, discussed ..... 1296

Blockade—

Pacific, would not justify interference with neutral shipping ..... 1293

Question of costs and expenses incurred in, not submitted  
to the Tribunal ..... 1274

Cases of the United States and Venezuela—

Are separate and distinct, and have been so treated in the  
arguments before the Tribunal ..... 1347

Claims—

Justice of the "first-rank" claims admitted by Venezuela;  
consideration may be given, however, to such claims as  
were recognized or paid without revision in order to show  
the preferences already obtained by the allies ..... 1274

Character and amount of, discussed ..... 1292

**PENFIELD, WILLIAM L.—Continued.**

Page.

**Argument in behalf of the United States and Venezuela—Continued.****Claims—Continued.**

In the collection of, the use of coercion should not be established as a means to which superior sanctity attaches to the detriment of nations resorting to peaceful methods.... 1297

**Coercion:**

Justice or injustice of, not a question for discussion before the Tribunal by neutral nations..... 1274

Contention of Great Britain that it had become necessary to resort to, with Venezuela, discussed..... 1338

**Conditions laid down by Great Britain and Germany—**

Were agreed to by Venezuela, but acceptance contained no assurance as to guaranty, adequate security, or separate or preferential treatment..... 1276, 1286

**Credentials of the Venezuelan plenipotentiary—**

Authorized negotiation of a settlement of the claims of all the creditor nations, and this fact was twice brought to the attention of the British Government..... 1276-1278

Authorizing a negotiation solely with the allies, never communicated to them..... 1276

Mr. Bowen's statement as to his powers..... 1277

Accuracy of the statement substantiated by the documents in the British Blue Book..... 1278

**Customs revenues—**

Estimate of those available from the ports of La Guaira and Puerto Cabello submitted to show lack of basis for the allies' claim as to their inadequacy to settle all claims..... 1292

**Decision of the Tribunal—**

If favorable to the allies, would be productive of violence by creditor States against a debtor State and between the creditor States themselves..... 1297

Must be determined upon principles of international law and international treaties..... 1274

Conclusions of the United States upon which it bases its request for favorable decision..... 1349

**Diplomatic settlement—**

Collection of claims may be as effectively done by diplomatic as by military procedure..... 1297

**Estoppel—**

The allies, having accepted Mr. Bowen's credentials authorizing him to settle claims of all creditor nations, are precluded from disputing the legitimacy of the negotiations... 1279

**Intervention—**

Of the peace powers between Venezuela and the allies, even if true, was an act of policy which the Tribunal can not consider ..... 1294

The allies are the interveners inasmuch as they step in and seek to deprive the peace powers of their share in an assignment made by Venezuela for the benefit of all creditor powers ..... 1295

Of the various governments, character and significance of, discussed ..... 1295

| PENFIELD, WILLIAM L.—Continued.   | Page.           |
|---|-----------------|
| Argument in behalf of the United States and Venezuela—Continued.  |                 |
| Intervention—Continued.   |                 |
| Of the peace powers, was effective in the interests of an amicable settlement of the claims against Venezuela by means of arbitration .....   | 1296            |
| Of the peace powers, was a legitimate use of diplomacy for the purpose of protecting the interests of their citizens, a right and duty indisputable.....  | 1339            |
| Issues between the peace powers and the allies—   |                 |
| Statement of the questions which are and which are not involved .....   | 1274            |
| Most-favored-nation treatment—  |                 |
| Demanded by the United States, Spain, and Belgium.....  | 1276            |
| Right of Venezuela to grant, admitted by the allies, but the form of it in the assignment disputed.....   | 1295            |
| Precedents—   |                 |
| Equality in matters of justice is a principle generally recognized between nations.....   | 1298, 1348      |
| Cited by the United States, related to cases, in substance and in principle, analogous to the case of Venezuela.....  | 1298            |
| Preferential treatment—   |                 |
| Question of greatest importance submitted to the Tribunal:<br>all other questions are left to its equitable decision.....   | 1275            |
| Not demanded by the allies until after protocols of February 13, 1903, had been signed .....  | 1282, 1286      |
| All claim to deliberately abandoned by the allies when they signed the protocols of February 13.....  | 1287            |
| Claim for, abandoned by Great Britain because of the pressure of public opinion in England .....  | 1287, 1341-1346 |
| Question of, must be decided by consideration of the rights of the parties as fixed by the protocols of February 13, 1903 .....   | 1289            |
| If acknowledged as a principle of law governing the relations of creditor and debtor nations, it would mean that the nation first declaring war is entitled to take all the revenues of the debtor state..... | 1296            |
| No notice that a claim would be made for, ever communicated to the United States prior to the blockade.....   | 1293            |
| Was accorded to the allies as to their "first-rank" claims, but as to their other claims there remains to be decided the question of settlement by separate or identic payments..                             | 1344            |
| Protocols—  |                 |
| Contained no pledge as to the adequacy of the guaranty and provided merely that the claims were to be settled within a reasonable time.....   | 1282, 1285      |
| German protocol contained no qualification as to time within which payment was to be made, thus placing the claims of German subjects on identically the same footing as those of the peace powers.....       | 1286            |
| Two questions only were left open by the protocols of February 13, 1903—the question of separate treatment and of the mode of distribution of the revenues.....   | 1288            |

**PENFIELD, WILLIAM L.—Continued.**

Page.

Argument in behalf of the United States and Venezuela—Continued.

Protocols—Continued.

Fundamental rights of the parties, as fixed by the previous protocols of February 13, not altered by the protocol of May 7, 1903 ..... 1288

Terms and conditions previously imposed and accepted by Venezuela, but omitted from the protocols, can not be incorporated by interpretation without violating the rule for the construction and interpretation of treaties..... 1340

Are the organic law of the Tribunal and the measure of its jurisdiction ..... 1341

Security—

Question of adequacy of, properly not before the Tribunal except by inference and argument..... 1275

Character of, to be given by Venezuela, left to determination by a mixed commission..... 1275, 1280

Question of its adequacy was raised in the ultimatums of the allies, but was not mentioned in the subsequent negotiations prior to the signing of the protocols of February 13, 1903 ..... 1281-1286

Inadequacy of, to pay all claims within a reasonable time not proven by Great Britain and Italy..... 1285

Was accepted by the allies in the form offered by Mr. Bowen, otherwise the allies would have required a stipulation in the protocols of February 13 as to the adequacy of the revenues for the payment of their claims within a limited time ..... 1287, 1342-1344

Question of its adequacy should have been raised when the assignment was made and prior to the signing of the protocols of February 13 ..... 1290

Discussion of the meaning of the phrase "adequate security" and its related phrase "reasonable time"..... 1290-1293

Separate treatment—

Not objected to by the United States if the claims of all creditor states are paid ratably and *pari passu*..... 1275

Meaning of, as distinguished from "preferential treatment" ..... 1340-1345

War—

Causes of, should be limited, as far as possible, in the interests of international arbitration, by reference to The Hague Tribunal of differences between states..... 1339

Public war is a legal status, and the United States, in keeping with its neutral attitude, has never asserted, and does not now assert, that the war against Venezuela was just or unjust..... 1274

Was not waged against Venezuela for political purposes, but to secure the payment of debts of justice, and this carries with it no right, as a right of war, to deny justice to other states unless that right is to be enforced by war..... 1295

**PRECEDENTS:**

Chinese Boxer indemnity cited as, in support of contention of peace powers for equal treatment..... 150, 888, 919, 1030, 1175, 1297

Not different in principle from the case of Venezuela..... 1120



## PRECEDENTS—Continued.

Page.

|  |                      |
|--|----------------------|
| Chinese Indemnity and the Haitian "light dues," not considered analogous to the case of Venezuela.....         | 979, 993, 1201, 1335 |
| Cited by the United States, related to cases, in substance and in principle analogous to the present case..... | 1298                 |
| Collection of indemnities in Turkey, Egypt, and China.....   | 430, 1001            |
| Collective diplomatic action against Guatemala in 1902 cited.....  | 162                  |
| Equality in matters of justice is a principle generally recognized between states.....                         | 1208, 1348           |
| In absence of, general principles of jurisprudence to be applied.....  | 880                  |
| In support of nondiscrimination in the treatment of nations.....   | 449-452              |

## PREFERENTIAL TREATMENT:

|   |                            |
|---|----------------------------|
| All claim to, deliberately abandoned by the allies when they signed the protocols of February 13, 1903.....   | 1287                       |
| Already accorded by the cash payment of "first-rank" claims....   | 435, 884                   |
| Allies entitled to, if the Tribunal can find justification for their conduct in resorting to force to collect their claims.....   | 1144                       |
| Analysis of negotiations with respect to.....   | 1025                       |
| Bases of claim for, on the part of Germany.....   | 1179                       |
| British contention for, set forth.....  | 764-766                    |
| Can be justified neither by the principles of equity nor by international practice.....   | 890                        |
| Can be demanded only as a reward of merit.....  | 1120                       |
| Claim for—  |                            |
| Founded not so much upon principles of equity as upon principles of law.....  | 1198                       |
| Forfeited upon acceptance by the allies of the credentials of the Venezuelan plenipotentiary .....  | 932                        |
| Not made by allies until after negotiations had ended.....  | 932                        |
| Abandoned by Great Britain because of the pressure of public opinion in England.....  | 1341-1346                  |
| Can not be sustained by international law.....  | 867                        |
| On account of expense incurred in blockade, discussed.....  | 866, 965, 1042, 1064, 1092 |
| On the ground of prior possession of customs ports not sustained by the facts.....  | 879                        |
| Conduct of peace powers now estops them from objecting to granting of .....   | 982                        |
| Demanded as a matter of law and equity by the allies for serving the cause of the peace powers by military operations against Venezuela .....   | 998, 1185, 1188            |
| Effects of decision in favor of.....  | 886                        |
| If acknowledged as a principle of law governing the relations of creditor and debtor nations, it would mean that the nation first declaring war is entitled to take all the revenues of the debtor State. | 1296                       |
| If granted to one of the allies, must be granted to all.....  | 1182                       |
| Implied by the fact that customs houses were proposed by Venezuela as a guaranty for the payment of the claims of the blockading powers .....   | 1248                       |
| Italian contention in respect to.....   | 862                        |
| Legal title to, obtained by the allies when they secured the pledge of the customs revenues.....  | 1194                       |
| Must be accorded in view of Venezuela's promise of adequate security .....  | 980                        |

**PREFERENTIAL TREATMENT—Continued.**

Page.

|  |                  |
|--|------------------|
| Negotiations between Venezuela and the powers do not sustain claim for .....   | 878              |
| Never promised by Venezuela.....   | 934              |
| Not demanded until after the protocols of February 13 had been signed .....  | 1282, 1286       |
| No notice that a claim would be made for, ever communicated to the United States prior to the blockade.....  | 1293             |
| Objections of Mr. Bowen to, commented on.....  | 1236             |
| Pledge of, not secured at the time blockade was raised.....  | 1061             |
| Priority of protocols of blockading powers establish right to.....   | 997              |
| Protocols and attending circumstances do not establish contention that claim for, had been abandoned.....  | 1307             |
| Question of greatest importance submitted to the tribunal; all other questions are left to its equitable decision.....   | 1275             |
| Question of, must be decided by consideration of the rights of the parties as fixed by the protocols of February 13.....   | 1289             |
| Right to, always insisted upon by the blockading powers, but mode of determining that right was changed.....   | 1237, 1309, 1323 |
| Right to, not impaired by the fact that securities were realized as a result of the use of force.....  | 1203             |
| Recapitulation of the objections of the United States to granting of .....   | 1174-1177        |
| Should be accorded the allies because of Venezuela's promise of adequate security, and this security will not be adequate if it is to be applied to all nations .....                | 1325-1327        |
| Should be granted as a right growing out of necessary use of force and the expenses incurred thereby.....  | 1181             |
| Should be granted, not as a reward of merit, but as a matter of right and equity.....  | 1199, 1253       |
| Was accorded the allies as to their "first-rank" claims, but as to their other claims there remains to be decided the question of settlement by separate or by identic payments..... | 1344             |
| Will not prejudice any vested rights of other creditor powers....  | 1239, 1248       |
| Will not seriously cripple Venezuela's administration of her finances..  | 1182             |
| Will be not only contrary to equity but dangerous to peaceful relations .....  | 886              |

**PROTOCOLS. (See also Protocols of Arbitration; Protocols of Proceedings of the Tribunal) :**

|  |            |
|--|------------|
| Anglo-Venezuelan, analyzed .....   | 875        |
| Are the organic law of the Tribunal and measure of its jurisdiction..  | 1341       |
| Belgian, validity of, can not be questioned.....   | 1049       |
| Between Venezuela and the powers placed signatories on equal footing.....  | 1058       |
| Conditions at the time of signing of, not to be considered as affecting the order of payment of claims.....  | 1059, 1100 |
| Contained no pledge as to the adequacy of the guaranty, and provided merely that the claims were to be settled within a reasonable time.....                                   | 1282, 1285 |
| Fundamental rights of the parties, as fixed by the previous protocols of February 13, not affected by the protocol of May 7, 1903.....   | 1288       |
| German protocol contained no qualification as to time of payment of her claims, thus placing German subjects on identically the same footing as those of the peace powers..... | 1286       |

## PROTOCOLS—Continued.

Page.

|   |                |
|---|----------------|
| Interpretation of-----  | 390, 438       |
| Italian protocol discussed-----   | 860            |
| Meaning of the words "separate treatment" in protocol of February 13 is identical with "separate or preferential treatment" in protocol of May 7, 1903-----   | 1307           |
| Must be interpreted in connection with the negotiations, to show the acquiescence of Venezuela in the demand for adequate security and, by implication, preferential treatment-----   | 1310           |
| No provision in, for indemnity for expenses of blockade-----  | 883            |
| Peace powers are bound by the provisions of the protocols of February 13-----   | 1266           |
| Position of the powers at time of signature of, to be considered in decision of the question-----   | 1254           |
| Priority of, establishes right of the allies to preferential treatment---   | 997            |
| Providing for mixed claims commission to settle claims against Venezuela-----   | 23, 25, 28, 38 |
| Provisions of the protocol of February 13 can not be affected by subsequent negotiations of Venezuela with other creditor powers-----   | 1205           |
| Questions left open by the protocols of February 13 were the questions of separate treatment and the mode of distribution of revenues assigned-----   | 1288           |
| Respective positions of all the creditor powers at time of signing of--   | 962            |
| Terms and conditions previously imposed and accepted by Venezuela, but omitted from the protocols, can not be incorporated by interpretation without violating a cardinal rule for the construction and interpretation of treaties----- | 1340           |
| Validity of those of the peace powers disputed-----   | 1033           |
| With peace powers, credentials of Venezuelan plenipotentiary fully authorized negotiation of-----   | 935            |

## PROTOCOLS OF ARBITRATION (texts):

|   |    |
|---|----|
| Providing for Mixed Claims Commissions—   |    |
| Between Germany and Venezuela, February 13, 1903-----                                     | 23 |
| Between Great Britain and Venezuela, February 13, 1903-----                               | 25 |
| Between Italy and Venezuela, February 13, 1903-----                                       | 28 |
| Between the United States and Venezuela, February 17, 1903----                            | 38 |
| Providing for submission of question of preferential treatment to the Hague Tribunal----- | 31 |

## PROTOCOLS OF PROCEEDINGS OF THE TRIBUNAL:

|  |    |
|--|----|
| Meeting of September 1, 1903 (French text, 44)-----                | 43 |
| Protocol I, meeting of October 1, 1903 (French text, 49)-----      | 44 |
| Protocol II, meeting of October 2, 1903 (French text, 57)-----     | 53 |
| Protocol III, meeting of October 3, 1903 (French text, 64)-----    | 61 |
| Protocol IV, meeting of October 5, 1903 (French text, 68)-----     | 66 |
| Protocol V, meeting of November 4, 1903 (French text, 73)-----     | 70 |
| Protocol VI, meeting of November 5, 1903 (French text, 77)-----    | 77 |
| Protocol VII, meeting of November 6, 1903 (French text, 78)-----   | 78 |
| Protocol VIII, meeting of November 7, 1903 (French text, 79)-----  | 79 |
| Protocol IX, meeting of November 9, 1903 (French text, 81)-----    | 80 |
| Protocol X, meeting of November 10, 1903 (French text, 84)-----    | 83 |
| Protocol XI, meeting of November 11, 1903 (French text 87)-----    | 85 |
| Protocol XII, meeting of November 12, 1903 (French text, 89)-----  | 88 |
| Protocol XIII, meeting of November 13, 1903 (French text, 91)----- | 90 |
| Protocol XIV, meeting of February 22, 1903 (French text, 99)-----  | 93 |

|   |                     |
|---|---------------------|
| <b>"QUEEN," case of:</b>  | <b>Page.</b>        |
| Correspondence relating to .....  | 606, 620, 777       |
| No justification can be found for destruction of .....  | 1214                |
| Specially considered as an example of arbitrary action by Venezuela<br>in seizing the property of British subjects .....  | 1211                |
| <b>"RACER," case of .....</b>   | <b>639-643, 648</b> |
| <b>RECLAMATIONS in behalf of citizens long domiciled in a foreign coun-<br/>try: question discussed In re Case of Kelly, British subject .....</b>                | <b>1142</b>         |
| <b>REPORT OF AGENT OF THE UNITED STATES:</b>  |                     |
| Letter of the President transmitting to Congress .....  | 7                   |
| Letter of the Secretary of State submitting to the President .....  | 8                   |
| Synopsis of report—   |                     |
| Statement of the controversy and the negotiations for arbitra-<br>tion .....  | 11                  |
| Issues defined .....  | 13                  |
| The Award of the Tribunal discussed .....   | 14                  |
| Remarks of M. Mouravieff in closing sessions commented on .....   | 15                  |
| Procedure of the Tribunal explained .....   | 17                  |
| Suggestions as to future arbitrations before the Hague Court .....  | 20                  |
| <b>RICHARDS, H. ERLE:</b>   |                     |
| Argument in behalf of Great Britain—  |                     |
| Acquiescence—   |                     |
| Action of the allies in using measures of force against Vene-<br>zuela acquiesced in by the peace powers .....  | 1264-1265           |
| Assignment—   |                     |
| Made by Venezuela was not voluntary, but in consideration<br>of the raising of the blockade .....   | 1265-1266           |
| Was a contract, offered by the allies and accepted by Vene-<br>zuela .....  | 1269                |
| Reservations as to claims of other powers were not made<br>at time of assignment, and if admitted now would nullify<br>acceptance .....                           | 1269                |
| Credentials of Venezuelan plenipotentiary authorized him to<br>conduct separate negotiations with the allies for the settle-<br>ment of their claims .....        | 1267                |
| Equality of treatment—  |                     |
| Peace powers made no claim to, until results of blockade<br>were manifest .....   | 1265                |
| Jurisdiction—   |                     |
| Of the Tribunal, derived solely from the protocol between<br>Venezuela and Great Britain of February 13, 1903, and the<br>court can not go beyond its terms ..... | 1265                |
| Parties to the controversy are Venezuela and the allies, the<br>claims of the other creditor powers being separate and dis-<br>tinct .....                        | 1264-1266           |
| Protocols—  |                     |
| Provisions of protocol of February 13 can not be affected by<br>negotiations of Venezuela with the peace powers .....   | 1265                |
| Peace powers are bound by the provisions of the protocols of<br>February 13 .....   | 1266                |
| Correspondence relating to negotiations prove the contro-<br>versy to be one to which Venezuela and the allies are alone<br>parties .....                         | 1266-1273           |

|  |                                |
|--|--------------------------------|
| <b>RICHARDS, H. ERLE—Continued.</b>  | <b>Page.</b>                   |
| Argument in behalf of Great Britain—Continued.   |                                |
| Security—  |                                |
| Proposed by Venezuela was to be adequate, and hence confined to the allies, as otherwise it would be inadequate.                         | 1268–1269                      |
| <b>ROMAN LAW:</b>  |                                |
| Principles of, applied to the question.....  | 916, 1094                      |
| <b>SAMPTY, JOHN A., case of</b> .....  | <b>645–648</b>                 |
| <b>"SEA HORSE," case of</b> .....  | <b>195, 482, 488, 496, 774</b> |
| <b>SECURITY:</b>   |                                |
| Acceptance of the terms laid down by Great Britain and Germany, implied the giving of adequate security.....                             | 1226–1227                      |
| Acquired as a result of the use of coercion, is unimpeachable.....   | 1200                           |
| Adequacy of—   |                                |
| Can not be disputed by Great Britain, as she accepted it in her protocols .....  | 934                            |
| Always insisted upon in lieu of immediate payment.....   | 1183, 1210                     |
| Discussed in United States case.....   | 442                            |
| Assignment of—   |                                |
| Was obtained solely by means of the blockade, at no expense to the peace powers and with their acquiescence.....                         | 1239, 1327                     |
| Not a voluntary act on the part of Venezuela, but an act due to the use of coercion by the allies.....                                   | 1195                           |
| Character of, was left to mixed commissions.....   | 1275, 1289                     |
| Could not have been obtained without the use of force.....   | 1240                           |
| Could only be considered adequate if it provided for payment of claims of blockading powers within a reasonable time.....                | 1222–1224, 1326                |
| Derived by the allies by means of the blockade, should not be shared by nations taking no part in obtaining it.....                      | 1204                           |
| Discussion of the meaning of the phrase "adequate security" and its related phrase "reasonable time".....                                | 1290–1293                      |
| For payment of claims of its citizens—none held by the United States.  | 431                            |
| Inadequacy of, to pay all claims within a reasonable time, not proven by Great Britain and Italy.....                                    | 1285                           |
| Is adequate to ultimately pay all claims properly chargeable against the revenues assigned by Venezuela.....                             | 1290                           |
| No assent given by Great Britain and Germany to the proposition that all creditor powers should share.....                               | 1180, 1211                     |
| Possession of, in the shape of the customs houses, was held by the allies at the time of the signing of protocols of February 13.....    | 1193                           |
| Promised by Venezuela, did not imply exclusive possession by the allies .....  | 1062                           |
| Question of its adequacy—  |                                |
| Was raised in the ultimatums, but was not mentioned in the subsequent negotiations prior to the signing of protocols of February 13..... | 1281–1286                      |
| Not before the Tribunal except by inference and argument.....  | 1275                           |
| Should have been raised when the assignment was made and prior to the protocols of February 13.....                                      | 1287, 1342–1344                |
| Realized as a result of the blockade, entitles allies to priority of payment .....   | 766                            |
| Stability of, dependent upon stability of Venezuelan institutions, and its value is more or less a matter of speculation.....            | 1326                           |
| Was acquired by the allies, and no negotiations, subsequently undertaken by Venezuela, can impair this acquired right.....               | 1179                           |

**SECURITY—Continued.**

Page.

|   |  |
|---|--|
| Was to be adequate and hence confined to the allies, as otherwise it would have been inadequate.....  | 991, 1002  |
| Was accepted by the allies in the form offered by Mr. Bowen, otherwise some stipulation would have been placed in the protocols of February 13..... | 1287, 1342-1344                                      |
| <b>SEIZURE</b> of British subjects at Patos Island, case of.....  | 190, 457, 465, 470-472, 486, 491, 503, 516, 523, 773 |

**SEPARATE TREATMENT:**

|   |           |
|---|-----------|
| Meaning of, as distinguished from "preferential treatment"....  | 1340-1345 |
| Not objected to by the United States if the claims of all creditor nations are paid ratably and <i>pari passu</i> ..... | 1275      |

**SPANISH CASE:**

|   |     |
|---|-----|
| Equality of States, application of the principle to the question before the Tribunal.....       | 914 |
| Contracts, international, can not curtail rights of other powers.....                           | 914 |
| "Kinship" of peoples of Spain and Venezuela, influence of, in determining course of former..... | 915 |
| Treaties, limitations and effects of.....   | 916 |
| Rights of neutral nations, can not be impaired by existence of a state of war.....              | 917 |
| Legal position of the case set forth.....   | 918 |
| Chinese Boxer Indemnity, cited as a precedent.....  | 919 |
| Blockade, cessation of, its relation to the claim of the allies discussed.....                  | 921 |
| Decision of Tribunal, effect of, if adverse to contentions of peace powers.....                 | 925 |

**SPANISH COUNTER CASE:**

|   |      |
|---|------|
| Spanish case reaffirmed.....  | 1090 |
| Answer to contention that customs revenues were specially pledged to the allies.....  | 1090 |
| Answer to contention of allies that they are entitled to preference on account of expenses incurred in blockade.....              | 1092 |
| Answer to contention that peace powers are receiving benefit from action of allies.....   | 1098 |
| Answer to Germany's contention that her claims were recognized and conditions accepted, thereby implying priority of payment..... | 1099 |
| Answer to Italian contention for prior payment based on order of signing of protocols.....  | 1100 |
| Civil and Roman law, application of, to the question.....   | 1094 |
| Claims of Spanish subjects, character and status of, explained.....   | 1103 |

**SPANISH CLAIMS:**

|                              |      |
|------------------------------|------|
| Character and status of..... | 1103 |
|------------------------------|------|

**SWEDISH-NORWEGIAN CASE:**

|                         |     |
|-------------------------|-----|
| Petition and brief..... | 927 |
|-------------------------|-----|

**SWEDISH-NORWEGIAN COUNTER CASE. (Same as Netherlands Counter Case.)****SWEDISH-NORWEGIAN CLAIMS:**

|                              |      |
|------------------------------|------|
| Character and status of..... | 1111 |
|------------------------------|------|

**ULTIMATUM:**

|   |     |
|---|-----|
| Text of, delivered by the British Government..... | 693 |
| Reply of the Venezuelan Government.....           | 299 |
| Text of, delivered by the German Government.....  | 272 |
| Reply of Venezuelan Government.....               | 275 |



**ULTIMATUM—Continued.**

|   |               |
|---|---------------|
| Adherence of Italy to the cause of Great Britain and Germany..  | 657, 665, 672 |
| Causes leading to presentation of.....  | 811           |
| Correspondence examined showing protests made by Great Britain<br>against acts of Venezuela, finally leading to presentation of.... | 1214-1219     |
| Demanded immediate settlement of matters of honor, but agreed to a<br>mixed commission to consider other claims.....                | 1305          |

**UNITED STATES CASE:****Introductory statement—**

|  |               |
|--|---------------|
| Question a legal one, not political.....   | 425           |
| Statement of events leading up to the blockade.....  | 426           |
| Attitude of the United States, as defined by the diplomatic corre-<br>spondence .....  | 426           |
| The United States a creditor state—evidence in support of right of,<br>to share in the 30 per cent trust fund.....               | 429           |
| Mixed Claims Commission between United States and Venezuela,<br>awards of.....   | 429, 432, 447 |
| Equality of states, application of the principle to the question before<br>the Tribunal.....                                     | 430           |
| Preferential treatment of the allies, contrary to international law<br>and precedents.....                                       | 430           |
| Equality of treatment in matters of justice, recognition of, necessary<br>to the peace and commercial progress of the world..... | 431           |
| Loss and detriment suffered by the United States as a result of the<br>use of coercion by the allies.....                        | 431           |
| Preferences already obtained by the allies.....  | 435           |
| Protocols, interpretation of.....  | 438           |
| Adequacy of Venezuela's guaranty.....  | 442           |
| Contentions of the United States summarized.....   | 444           |
| Argument by Herbert W. Bowen.....  | 445           |

**UNITED STATES CASE APPENDIX:****Precedents in support of nondiscrimination in the treatment of  
nations—**

|   |     |
|---|-----|
| Case of the Haitian "light dues".....   | 449 |
| Case of Robert Nortz.....   | 451 |
| Case of Weyman & Co.....  | 451 |
| Case of F. Herman & Co.....   | 451 |
| Case of Bruel claim.....  | 452 |
| Note of Lord Pauncefote concerning discrimination practiced in<br>Guatemala ..... | 452 |

**Diplomatic correspondence concerning nondiscrimination—**

|   |     |
|---|-----|
| Sir Edward Thornton to Mr. Evarts, June 17, 1880..... | 449 |
| Mr. Hay to Sir Edward Thornton, June 19, 1880.....    | 450 |
| Mr. Langston to Mr. Archin, July 14, 1880.....        | 450 |

**United States and Venezuelan Mixed Claims Commission—**

|  |     |
|--|-----|
| List of claims awarded by, transmitted by Mr. Adee to Mr. Pen-<br>field, September 21, 1903..... | 454 |
| List of indemnities awarded by Commissions of 1889 and 1894....                                  | 454 |

**UNITED STATES COUNTER CASE. (Same as Venezuelan Counter  
Case.)****UNITED STATES CLAIMS:**

|  |     |
|--|-----|
| List of, awarded by United States and Venezuelan Mixed Claims<br>Commission of 1903..... | 447 |
|--|-----|

|  | Page.         |
|--|---------------|
| <b>UNITED STATES AND VENEZUELAN MIXED CLAIMS COMMISSIONS:</b>  |               |
| Awards against Venezuela by Commissions of 1889 and 1891....   | 429-432, 454  |
| Awards of Commission of 1903.....  | 447-448       |
| <b>VENEZUELAN CASE:</b>  |               |
| Preliminary examination.....   | 145           |
| Statement of the question before the Tribunal.....   | 149           |
| Solution not to be based solely on international law.....  | 150           |
| Precedents, few found applicable.....  | 150           |
| Chinese Boxer Indemnity cited as.....  | 150           |
| Blockade, character and meaning of, discussed.....   | 157           |
| Great Britain, action of, the test of the propriety of the similar<br>action of Germany and Italy.....           | 158           |
| Diplomatic correspondence with Great Britain examined.....   | 158           |
| Hague Court, its relation to the progress of international law.....  | 169, 187      |
| New era inaugurated by.....  | 169           |
| Principles framed by, to become indispensable parts of inter-<br>national law .....                              | 170           |
| Conquests by powers in other parts of the world cited as a cause of<br>apprehension by Venezuela.....            | 170           |
| Claims, conditions under which they arise from investments made in<br>Latin-American countries .....             | 171           |
| Of the "first rank," peremptory demand for payment of, inde-<br>fensible .....                                   | 178           |
| Monroe doctrine, interpretation of, where Latin-American countries<br>misconduct themselves .....                | 173           |
| Insurrections in South American countries, irritating and cause of<br>credence in unjust complaints.....         | 179           |
| Disparity of strength between Venezuela and allies, in view of, for-<br>bearance should have been exercised..... | 180           |
| Arbitrations since The Hague Conference, should be viewed from<br>new standpoint .....                           | 181           |
| Mixed Claims Commissions, comparison of awards with the amounts<br>contended for .....                           | 182           |
| Latin-American nations, conditions in, which should affect policy of<br>other nations toward .....               | 184           |
| Claims of British subjects examined.....   | 190           |
| <i>Ban Righ</i> , case of, examined.....   | 205           |
| Alliance of the blockading powers, true purpose of its formation set<br>forth .....                              | 224           |
| Ultimatums of the allies—  |               |
| Terms of .....   | 227, 272, 693 |
| Subsequent negotiations set forth.....   | 228           |
| Preferential treatment, demand for, not acquiesced in by Venezuela..   | 231           |
| Decision of the Tribunal, importance of, discussed.....  | 232           |
| Recapitulation .....   | 239           |
| <b>VENEZUELAN CASE APPENDIX:</b>   |               |
| Venezuela's "Yellow Book"—   |               |
| First Part (Germany)—  |               |
| Memorandum of the Minister of Foreign Relations of the<br>United States of Venezuela, August 12, 1902.....       | 247           |
| Doctor Schmidt Leda to Doctor Andueza Palacio, April 11,<br>1900 .....   | 252           |

## VENEZUELAN CASE APPENDIX—Continued.

Page.

## Venezuelan "Yellow Book"—Continued.

## First Part (Germany)—Continued.

|   |     |
|---|-----|
| Doctor Andueza Palacio to Doctor Schmidt Leda, May 10, 1900 .....     | 252 |
| Doctor Schmidt Leda to Doctor Andueza Palacio, May 30, 1900 .....     | 253 |
| Memorandum of the Imperial Legation of Germany, March, 8, 1901 .....  | 253 |
| Memorandum of the Minister of Foreign Relations, March 19, 1901 ..... | 254 |
| Doctor Schmidt Leda to Doctor Blanco, March 24, 1901 .....            | 259 |
| Doctor Blanco to Doctor Schmidt Leda, March 30, 1901 .....            | 260 |
| Mr. von Pilgrim Baltazzi to Doctor Blanco, July 16, 1901 .....        | 261 |
| Doctor Blanco to Mr. von Pilgrim Baltazzi, July 23, 1901 .....        | 262 |
| Mr. von Pilgrim Baltazzi to General Pachano, December 31, 1901 .....  | 265 |
| General Pachano to Mr. von Pilgrim Baltazzi, January 8, 1902 .....    | 265 |
| Mr. von Pilgrim Baltazzi to General Pachano, February 13, 1902 .....  | 267 |
| General Pachano to Mr. von Pilgrim Baltazzi, February 18, 1902 .....  | 268 |
| Mr. von Pilgrim Baltazzi to Doctor Palacio, May 5, 1902 .....         | 269 |
| Doctor Palacio to Mr. von Pilgrim Baltazzi, May 9, 1902 .....         | 270 |
| Mr. von Pilgrim Baltazzi to Doctor Baralt, December 7, 1902 .....     | 272 |
| Doctor Baralt to Mr. von Pilgrim Baltazzi, December 9, 1902 .....     | 275 |

## Second Part (Great Britain)—

|  |     |
|--|-----|
| Mr. Haggard to Señor Palacio, April 30, 1900 .....   | 279 |
| Señor Palacio to Mr. Grant Duff, May 10, 1900 .....  | 280 |
| Mr. Haggard to Señor Blanco, April 25, 1901 .....  | 281 |
| Señor Blanco to Mr. Haggard, May 11, 1901 .....  | 282 |
| Mr. Haggard to Señor Blanco, May 13, 1901 .....  | 283 |
| Señor Blanco to Mr. Haggard, May 25, 1901 .....  | 284 |
| Mr. Haggard to General Pachano, December 25, 1901 .....  | 289 |
| General Pachano to Mr. Haggard, January 4, 1902 .....  | 290 |
| Mr. Haggard to General Pachano, January 12, 1902 .....   | 291 |
| General Pachano to Mr. Haggard, January 25, 1902 .....   | 291 |
| Mr. Haggard to General Pachano, January 31, 1902 .....   | 293 |
| General Pachano to Mr. Haggard, February 6, 1902 .....   | 293 |
| Mr. Haggard to General Pachano, February 8, 1902 .....   | 294 |
| General Pachano to Mr. Haggard, February 14, 1902 .....  | 294 |
| Mr. Haggard to General Pachano, February 20, 1902 .....  | 295 |
| Mr. Haggard to Señor Baralt, November 11, 1902 .....   | 295 |
| Señor Baralt to Mr. Haggard, November 14, 1902 .....   | 296 |
| Mr. Haggard to Señor Baralt, November 19, 1902 .....   | 297 |
| Mr. Haggard to Señor Baralt, December 7, 1902 .....  | 298 |
| Señor Baralt to Mr. Haggard, December 9, 1902 .....  | 299 |
| Señor Baralt to Mr. Bowen, December 17, 1902 .....   | 301 |
| Note relative to joint action of Germany and Great Britain and protocols signed in Washington by the representatives of said nations ..... | 301 |

## Third Part (Italy)—

|  |     |
|--|-----|
| Mr. Riva to Doctor Blanco, August 27, 1900 ..... | 304 |
|--|-----|

## VENEZUELAN CASE APPENDIX—Continued.

Page.

## Venezuelan "Yellow Book"—Continued.

## Third Part (Italy)—Continued.

|  |     |
|--|-----|
| Doctor Blanco to Mr. Riva, August 30, 1900.....  | 304 |
| Mr. Riva to Doctor Blanco, April 24, 1901.....   | 307 |
| Doctor Blanco to Mr. Riva, May 2, 1901.....  | 307 |
| Mr. Riva to Señor Pachano, April 19, 1902.....   | 312 |
| Señor Palacio to Mr. Riva, April 24, 1902.....   | 313 |
| Mr. Riva to General Ferrer, June 28, 1902.....   | 314 |
| General Ferrer to Mr. Riva, June 30, 1902.....   | 314 |
| Mr. Riva to Señor Baralt, December 11, 1902.....   | 316 |
| Señor Baralt to Mr. Riva, December 13, 1902.....   | 317 |
| Mr. Riva to Señor Baralt, December 16, 1902.....   | 319 |
| Señor Baralt to Mr. Bowen, December 17, 1902.....  | 319 |
| Note relative to the coercive action of Italy and the protocol<br>signed in Washington by the representative of said nation..  | 319 |
| Result of the debate of the National Congress on the three<br>protocols of the 13th of February, 1903.....   | 321 |
| Report of the High Commission of Foreign Affairs charged<br>with the consideration and report of the protocols signed<br>in Washington by the commissioner of Venezuela and the<br>representatives of Germany, Great Britain, and Italy..... | 321 |

*Ban Righ* (Libertador)—

Correspondence relating to the revolutionary steamer *Ban Righ* and to the attitude assumed by the authorities of Trinidad—

|   |     |
|---|-----|
| General Pachano to Mr. Haggard, December 31, 1901....                 | 324 |
| Mr. Haggard to General Pachano, January 3, 1902.....                  | 325 |
| Mr. Haggard to General Pachano, January 5, 1902.....                  | 326 |
| General Pachano to Mr. Haggard, January 7, 1902.....                  | 327 |
| Mr. Granville to Señor De Rojas, July 6, 1902.....                    | 328 |
| General Pachano to Mr. Haggard, January 14, 1902... ..                | 329 |
| Mr. Haggard to General Pachano, January 11, 1902.....                 | 330 |
| Mr. Haggard to General Pachano, January 17, 1902.....                 | 334 |
| General Pachano to Mr. Haggard, January 25, 1902.....                 | 335 |
| Mr. Haggard to General Pachano, January 24, 1902.....                 | 341 |
| General Pachano to Mr. Haggard, January 27, 1902.....                 | 342 |
| Mr. Haggard to General Pachano, February 6, 1902.....                 | 342 |
| General Pachano to Mr. Haggard, February 12, 1902.....                | 343 |
| Mr. Haggard to Minister of Foreign Affairs, February<br>14, 1902..... | 344 |
| Mr. Haggard to General Pachano, February 14, 1902....                 | 344 |
| General Pachano to Mr. Haggard, February 28, 1902....                 | 346 |
| Mr. Haggard to General Pachano, March 3, 1902.....                    | 347 |
| Mr. Haggard to General Pachano, February 25, 1902....                 | 348 |
| General Pachano to Mr. Haggard, March 8, 1902.....                    | 348 |
| General Pachano to Mr. Haggard, March 13, 1902.....                   | 349 |
| Mr. Haggard to General Pachano, March 14, 1902.....                   | 350 |
| General Pachano to Mr. Haggard, March 24, 1902.....                   | 351 |
| Mr. Haggard to General Pachano, March 25, 1902.....                   | 351 |
| Mr. Haggard to General Pachano, March 25, 1902.....                   | 352 |
| Mr. Haggard to General Pachano, March 20, 1902.....                   | 352 |
| Mr. Haggard to General Pachano, March 27, 1902.....                   | 353 |

## VENEZUELAN CASE APPENDIX—Continued.

Page.

## Venezuelan "Yellow Book"—Continued.

*Ban Righ* (Libertador)—Continued.

## Correspondence, etc.—Continued.

|  |     |
|--|-----|
| General Pachano to Mr. Haggard, March 29, 1902-----  | 354 |
| Mr. Haggard to General Pachano, March 31, 1902-----  | 354 |
| General Pachano to Mr. Haggard, April 5, 1902-----   | 354 |
| Mr. Haggard to General Pachano, April 8, 1902-----   | 362 |
| General Pachano to Mr. Haggard, April 11, 1902-----  | 363 |
| Mr. Haggard to General Pachano, April 8, 1902-----   | 363 |
| Señor Palacio to Mr. Haggard, April 24, 1902-----  | 363 |
| Mr. Haggard to General Ferrer, May 23, 1902-----   | 364 |
| Sir A. Moloney to Mr. Haggard, May 14, 1902-----   | 364 |
| Mr. Haggard to General Ferrer, July 4, 1902-----   | 365 |
| Señor Baralt to Mr. Haggard, July 16, 1902-----  | 365 |
| Mr. Haggard to Señor Baralt, July 30, 1902-----  | 366 |
| Señor Baralt to Mr. Haggard, August 2, 1902-----   | 367 |
| Mr. Haggard to Señor Baralt, August 21, 1902-----  | 368 |
| Doctor Baralt to Mr. Haggard, August 27, 1902-----   | 369 |
| Doctor Baralt to Mr. Haggard, October 27, 1902-----  | 370 |
| Doctor Baralt to Mr. Haggard, November 24, 1902-----   | 371 |
| Correspondence and cablegrams relating to the Venezuelan protocols—  |     |
| Mr. Bowen to Mr. Hay, December 9, 1902-----  | 372 |
| Mr. Hay to Mr. Bowen, December 10, 1902-----   | 372 |
| Mr. Bowen to Mr. Hay, December 11, 1902-----   | 372 |
| Mr. Hay to Mr. Bowen, December 12, 1902-----   | 373 |
| Mr. Bowen to Mr. Hay, December 13, 1902 (with inclosure in regard to serving as arbitrator for Venezuela)-----   | 373 |
| Inclosure 1, Doctor Baralt to Mr. Bowen-----   | 373 |
| Inclosure 2, Mr. Bowen to Doctor Baralt-----   | 374 |
| Inclosure 3, Doctor Baralt to Mr. Bowen-----   | 374 |
| Mr. Bowen to Mr. Hay, December 15, 1902-----   | 374 |
| Mr. Hay to Mr. Bowen, December 16, 1902-----   | 375 |
| Mr. Bowen to Mr. Hay, December 18, 1902-----   | 375 |
| Mr. Hay to Mr. Bowen, December 18, 1902-----   | 375 |
| Mr. Bowen to Mr. Hay, December 20, 1902-----   | 376 |
| Mr. Bowen to Mr. Hay, December 27, 1902, with inclosure of a petition to President Castro from the people in regard to Mr. Bowen's adjusting the difficulties----- | 376 |
| Mr. Hay to Mr. Bowen, December 27, 1902-----   | 377 |
| Mr. Hay to Mr. Bowen, December 27, 1902-----   | 379 |
| Mr. Bowen to Mr. Hay, December 31, 1902-----   | 379 |
| Mr. Bowen to Mr. Hay, January 6, 1903-----   | 380 |
| Mr. Hay to Mr. Bowen, January 6, 1903-----   | 381 |
| Mr. Hay to Mr. Bowen, January 7, 1903-----   | 381 |
| Mr. Bowen to Mr. Hay, January 7, 1903, granting of powers by Venezuela to Mr. Bowen to adjust difficulties-----  | 382 |
| Mr. Hay to Mr. Bowen, January 8, 1903-----   | 382 |
| Mr. Bowen to Mr. Hay, January 19, 1903-----  | 383 |
| Mr. Bowen to Sir M. Herbert, January 23, 1903-----   | 383 |
| Sir M. Herbert to Mr. Bowen, January 23, 1903-----   | 383 |
| Mr. Bowen to Sir M. Herbert, January 23, 1903-----   | 384 |
| Count von Quadt to Mr. Bowen, January 23, 1903-----  | 384 |

## VENEZUELAN CASE APPENDIX—Continued.

Page.

Correspondence and cablegrams relating to the Venezuelan protocols—  
Continued.

|   |     |
|---|-----|
| Additional document presented by Count von Quadt.....   | 385 |
| M. des Planches to Mr. Bowen, January 24, 1903.....   | 386 |
| Mr. Bowen to M. des Planches, January 24, 1903.....   | 386 |
| Mr. Bowen's agreement respecting the 30 per cent, January 27, 1903 .....  | 386 |
| Mr. Bowen to Sir M. Herbert, January 27, 1903.....  | 387 |
| Mr. Bowen's objections, January 30, 1903.....   | 387 |
| Mr. Bowen to Sir M. Herbert, February 2, 1903.....  | 387 |
| Mr. Bowen to Count von Quadt, February 5, 1903.....   | 388 |
| Mr. Bowen to Baron von Sternburg, February 10, 1903 .....   | 388 |
| Mr. Bowen to Sir M. Herbert, February 10, 1903.....   | 389 |
| A concession to Germany by Mr. Bowen, February 11, 1903 .....   | 389 |
| Explanation by Sir M. Herbert of payment of £5,500, February 14, 1903.....  | 390 |
| Interpretation of protocols by Herbert W. Bowen, Michael H. Herbert, Mayor des Planches, and H. Sternburg, February 14, 1903 .....                  | 390 |
| President Castro to Mr. Bowen, February 14, 1903.....   | 390 |
| Mr. Bowen's draft protocol.....   | 391 |
| Mr. Bowen to Sir M. Herbert, March 19, 1903.....  | 392 |
| Sir M. Herbert to Mr. Bowen, March 20, 1903.....  | 392 |
| Mr. Bowen to Sir M. Herbert, March 20, 1903.....  | 392 |
| Sir M. Herbert to Mr. Bowen, March 20, 1903.....  | 393 |
| Mr. Bowen's draft protocol as amended by Sir M. Herbert, received April 2, 1903.....  | 393 |
| Mr. Bowen to Sir M. Herbert, April 2, 1903.....   | 395 |
| Sir M. Herbert to Mr. Bowen, April 3, 1903.....   | 397 |
| Mr. Bowen to Sir M. Herbert, April 3, 1903.....   | 397 |
| Mr. Bowen to Sir M. Herbert, April 25, 1903.....  | 398 |
| Mr. Bowen's amendment of 'The Hague protocol.....   | 399 |
| Mr. Bowen to Baron von Sternburg, May 2, 1903.....  | 400 |
| Mr. Bowen to the representatives of the allies, May 8, 1903 .....   | 400 |
| Protocols for the settlement of claims against Venezuela, list of Argentine Republic instruction to minister at Washington, December 29, 1902 ..... | 401 |
| Mr. Hay to Señor Merou, with inclosed memorandum, February 17, 1903.....  | 406 |
| Señor Urbaneja to Mr. Bowen, June 1, 1903.....  | 406 |
| Attitude of Venezuela towards compulsory arbitration.....   | 413 |
| Delegate of Venezuela at signing of arbitration treaty of December 26, 1901, remarks of .....   | 416 |
| Withdrawal of Venezuela from signing of arbitration treaty, reason of .....   | 417 |
| Mr. Walker-Martinez to the Venezuelan Secretary of Foreign Affairs .....  | 417 |
| Secretary of Foreign Affairs to Mr. Walker-Martinez.....  | 418 |
| Claims of the United States, number, amount of, and percentage allowed before five commissions.....   | 418 |
| United States and Mexican Claims Commission of July 4, 1868, table of claims before.....  | 418 |



## VENEZUELAN CASE APPENDIX—Continued.

Page.

Correspondence and cablegrams relating to the Venezuelan protocols—  
Continued.

|   |     |
|---|-----|
| United States and British Claims Commission of May 8, 1871,<br>table of claims before.....    | 418 |
| Spanish Claims Commission of February 12, 1871, table of<br>claims before.....                | 419 |
| French-American Claims Commission of January 15, 1880, table<br>of claims before.....         | 419 |
| United States and Chilean Claims Commission of August 7, 1892,<br>table of claims before..... | 419 |
| United States and Chilean Claims Commission of May 24, 1897,<br>table of claims before.....   | 419 |
| Chinese Indemnity, list of apportionment to foreign powers of....                             | 420 |
| Report of Committee on Foreign Bondholders on principal loans<br>in default in 1901-2 in—     |     |
| Argentina .....   | 420 |
| Costa Rica.....   | 420 |
| Mississippi .....   | 421 |
| Santo Domingo.....  | 421 |
| Venezuela .....   | 421 |
| West Virginia.....  | 421 |
| Colombia .....  | 421 |
| Former Confederate States.....  | 421 |
| Guatemala .....   | 421 |
| Honduras .....  | 422 |
| Louisiana .....   | 422 |
| Summary of principal loans in default in 1900-1902 .....                                      | 422 |

## VENEZUELAN COUNTER CASE:

## Preliminary statement—

|  |     |
|--|-----|
| Credentials of Venezuelan plenipotentiary.....                                       | 931 |
| Equality of treatment, promised by Venezuelan plenipotentiary<br>to all powers ..... | 931 |

## Answer to German case—

## German claims—

|   |     |
|---|-----|
| Venezuela, under duress, admitted in principle the justice of..                                   | 931 |
| Delay in settlement of, due to presence of insurrection,<br>which first had to be suppressed..... | 931 |

## Priority of payment—

|   |     |
|---|-----|
| Never promised by Venezuela.....  | 932 |
| Claim for, not set up by allies until negotiations had ended...                           | 932 |
| Forfeited by Germany upon acceptance of credentials<br>of Venezuelan plenipotentiary..... | 932 |
| Other contentions in support of claim for, answered.....                                  | 933 |

## Answer to British case—

|  |     |
|--|-----|
| Adequacy of security pledged by Venezuela, can not be disputed<br>by Great Britain, as she accepted it in her protocols..... | 934 |
| Use of coercion by allies, claim for preference can not properly<br>be based upon.....                                       | 934 |

## Answer to Italian case—

|  |     |
|--|-----|
| Customs revenues, no exclusive assignment of, made to blockad-<br>ing powers .....     | 934 |
| Protocols with the peace powers, negotiation of, fully authorized<br>by Venezuela..... | 935 |

**VESTED RIGHTS:**

Page.

|   |           |
|---|-----------|
| French and Belgian special securities, not prejudiced by the assignment of revenues to the allies.....            | 1248-1249 |
| Of creditor powers, not affected by assignment of customs revenues of La Guaira and Puerto Cabello to allies..... | 977       |

**WAR:**

|  |      |
|--|------|
| Public war is a legal status, and the United States, in keeping with its neutral attitude, has never asserted, and does not now assert, that the war against Venezuela was just or unjust.....   | 1274 |
| Was not waged against Venezuela for political purposes, but to secure the payment of debts of justice, and this carries with it no right, as a right of war, to deny justice to other States unless that right is to be enforced by war..... | 1295 |
| Causes of, should be limited as far as possible, in the interests of international arbitration, by reference to The Hague Tribunal of differences between States .....   | 1339 |

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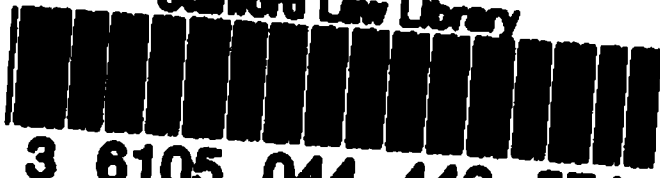








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